

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

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Transcript of Record.

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VOLUME V.

(Pages 1633 to 2048, Inclusive.)

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Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1.

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(Testimony of F. W. Bradley.)

Q. Did you go over the plans of the Ebner Company with Mr. Ebner at that time?

A. Yes; Mr. Ebner had his maps and data and statements, which I went over with him.

Q. How did the matters gone over with him at that time compare with the statements in this report?

A. That written statement there contains the substance of what we went over, with the exception that he granted me permission to have an examination made of the mine, and I proceeded to have the examination made.

Mr. HELLENTHAL.—I now renew the offer—I offer in evidence Plaintiff's Exhibit No. 38 for Identification.

Judge WINN.—Mr. Bradley, do you swear that this paper writing here, written by the typewriter—that Mr. Ebner ever signed his name, himself, to any original paper of which this is a copy?

A. No; I cannot—I didn't know Mr. Ebner's signature at that [1480—1330] time.

Q. (By Judge WINN.) Did you know Mr. Behrends' signature? A. Not at that time; no.

Judge WINN.—We still urge the objection, if your Honor please.

The COURT.—Objection sustained.

Mr. HELLENTHAL.—I think, your Honor, the point about this thing is this: Mr. Bradley had before him this statement; of course, he cannot testify probably that was the signature of Mr. Behrends or the signature of Mr. Ebner, but he knows that he got at that time the document from Mr. McDonald, and

(Testimony of F. W. Bradley.)

it was signed by the Ebner Gold Mining Company by William M. Ebner and B. M. Behrends; whether the signatures are genuine or not Mr. Bradley is not able to state, because he was not familiar with the signatures at that time; I don't think that ought to go to the admissibility of the paper in view of the fact that the matters related in the paper were gone over by Mr. Bradley and Mr. Ebner, and the matters and things therein confirmed at this meeting; the original was destroyed in the San Francisco fire, and this is a copy—the best we can get.

The COURT.—That may all be true, but you are offering a paper which the witness says is a copy of a paper which he received from Mr. McDonald—a paper purporting to be signed by a certain person; whether it was ever signed by that person or not this witness doesn't know. Now, you are not precluded from going into what Mr. Ebner said, and you are not precluded from having this witness refreshing his memory by looking at that examined copy to tell what was talked about, but you are certainly not within the rule in offering the paper itself.

Mr. HELLENTHAL.—We will proceed in that manner, then, your Honor.

Q. Now, Mr. Bradley, I hand you here this paper, which is marked for identification as Plaintiff's Exhibit No. 38, and [1481—1331] I ask you to state just what the representations were that Mr. Ebner made to you at that time, and you may use the paper for the purpose of refreshing your memory upon that subject.

(Testimony of F. W. Bradley.)

Judge WINN.—I object to the question as incompetent, irrelevant and immaterial; and I object to his refreshing his memory from a paper that is not an original memorandum by any one, and which has not been shown to be a copy of any original memorandum of any one.

The COURT.—Objection overruled.

Judge WINN.—And too remote from the time of the transaction.

The COURT.—That will come under your objection—objection overruled.

A. We had maps of the ground workings, and he stated to me what constituted the Ebner property; he represented to me the objects of the new mill site on the Lotta ground, where a building had been erected to contain 40 stamps and where grading had been begun for adding 60 stamps more; that he either was going to sell the property or he was going to raise the money to build the 100-stamp mill, and that he would give me an opportunity to buy if, after an examination, I wanted it, and gave me a certain time in which to buy it; if I didn't want to buy, he was going ahead and raise the money to build the mill; I asked them for the privilege of making an examination, which he granted, and I had Joseph McDonald and R. A. Kinzie make the examination, and thereafter the negotiations dropped through.

Judge WINN.—I move to strike out the whole of the answer of the witness, if your Honor please; these negotiations never terminated in anything and were not binding upon any of the parties at all; it is

(Testimony of F. W. Bradley.)

absolutely irrelevant and immaterial, and not rebuttal testimony.

The COURT.—Motion denied.

Q. Now, Mr. Bradley, as a result of the representations made to [1482—1332] you by Mr. Ebner at that time to the effect that he intended to build the mill on the Lotta claim having a capacity of 40 stamps, to which an additional 60 stamps would thereafter be added, what effect did that have upon your future actions, if any?

Judge WINN.—I object to the question as incompetent, irrelevant and immaterial; took place eight or nine years prior to the inception of any rights claimed by either party to this suit.

The COURT.—It seems pretty remote, Judge Winn, but it goes to the weight of it.

A. I concluded that if the Ebner Gold Mining Company built a 100-stamp mill on the Lotta claim, that we, being the fartherest down the creek, they would use the water, and that the Alaska-Juneau could pick it up when they got ready at the point where the Ebner Gold Mining Company dropped it.

Q. As a result of that conclusion, Mr. Bradley, what did you do—first, what did you do in the way of terminating your negotiations with Mr. Ebner—what effect did that have upon your negotiations with Mr. Ebner, and then what did you do in regard to effecting a water right?

A. I determined, for the Alaska-Juneau Company, that the building of a mill by the Ebner Company on the Lotta claim enabled us to pick up the water be-

(Testimony of F. W. Bradley.)

low the point where they would drop it in Gold Creek, and that there was no necessity for us to purchase the Ebner property, as in purchasing the Ebner property we would be purchasing an additional amount of ore of similar character to that we had already.

Q. And giving you no additional facilities?

A. And giving us no additional facilities.

Q. I wish you would explain fully why you examined Mr. Ebner's property and why you didn't buy it?

(Not answered because of objection.)

Q. Mr. Bradley, had it not been for the representations of Mr. [1483—1333] Ebner to the effect that the new mill, enlarged mill, was to be built on the Lotta claim above a point where you could pick up the water, what other action would you have taken concerning your negotiations with them—concerning the purchasing of the Ebner property for the Alaska-Juneau Company?

A. I had these negotiations with Mr. Ebner and went to the expense of having the Ebner property examined, believing that it might be a desirable outlet for the Alaska-Juneau property; and after knowing the plans—learning the plans of the Ebner Gold Mining Company, and after learning that their ore was of a similar character to ours, I saw no advantage in purchasing that property, because we had sufficient ore of our own, and we could pick up the water after they turned it back into the creek. We had sufficient ore of our own, and I came to the conclusion for the



(Testimony of F. W. Bradley.)

Alaska-Juneau Company that there was no need of purchasing more ore of the same character; we knew just where the Ebner Company had been dropping the water in Gold Creek and where they would drop it, and for our own needs we could pick it up below where they dropped it.

Q. Then what did you do pursuant to that?

A. I went to work maturing our own plans for carrying out the general development and equipment of our property that is now under way.

Q. And what did you do in the way of locating a water right on Gold Creek?

A. I asked Superintendent Kinzie to take that up and do it, in 1909.

Q. At what point with reference to the place where Mr. Ebner told you he was going to drop the water?

(Not answered because of objection.)

Q. Where did you tell Mr. Kinzie to take up the water? [1484—1334]

A. On Gold Creek, below the Ebner water wheel.

Q. What wheel did you refer to?

A. Not the wheel in the new mill building.

Q. The wheel where? A. On the Lotta claim.

Q. Where is that situated with reference to your present intake?

A. Situated above the present intake.

Q. And the use of the water at that building by the Ebner Company, would that in any way interfere with the use of the water by you?

A. No; we would pick it up where they dropped it.

(Testimony of F. W. Bradley.)

Q. Now, had Mr. Ebner not made these representations to you in San Francisco concerning his future plans, would it have made any difference in regard to your future plans from that time on?

(Objection.)

The COURT.—You may answer the question as to whether or not if Mr. Ebner had not made the representations that you have testified to, would you have done what you did do.

Q. Just answer that question as put by the Court.

A. No; we would have to make other plans.

Q. Now, in 1910, at the time this water location was posted by Mr. Mulligan, the first of August, 1910, did you have any knowledge that Mr. Tripp had posted any notice on the Ebner dam, or elsewhere? A. No.

Q. Did you have any knowledge that the Ebner Company, or Mr. Tripp, or the California-Nevada Copper Company, or any one connected with those people, laid any claim to any part of the water of Gold Creek above your intake? A. No.

Q. I mean laid any claim to any part of the water of Gold Creek that would interfere with your taking the water at your [1485—1335] intake?

A. No.

Q. Now, you were in Alaska in June of 1910, I believe? A. July.

Q. July, 1910; at that time did you communicate to any one connected with the Ebner Gold Mining Company anything concerning your plans of taking out the water in that vicinity and conveying it around the hill? A. Yes; I told Mr. Winn.

(Testimony of F. W. Bradley.)

Q. He was acting as attorney for whom?

A. He was attorney for the Ebner Gold Mining Company.

Q. At what time did you have this talk with Judge Winn?     A. Between July 22d and August 2d.

Q. What did you tell him?

A. I told him with reference to the deed that we had to give the Jualpa people that I wanted the reservation for a flume line.

Q. Where did this conversation take place?

A. At Treadwell.

Q. Do you remember the date?

A. Between July 22d and August 2d, 1910.

Q. Where is that piece of ground concerning which you are talking?

A. That is near the Jualpa dam, and the Gold Creek tunnel.

Q. I wish you would just state to the Court the whole circumstances and the whole conversation, so Judge Winn will remember it.

A. Judge Winn asked for a deed, and I told him that there had been an understanding between Superintendent Kinzie and Mr. Hyle that we would want a right of way for the flume across the ground. and Judge Winn replied that probably Mr. Hyle would consent to whatever verbal agreement he may [1486—1336] have had with Mr. Kinzie; there-upon I sent a deed from San Francisco to Mr. Kinzie to be delivered to Judge Winn, and in that deed I made the reservation that I had talked about to Judge Winn.



(Testimony of F. W. Bradley.)

Q. Were you in Juneau in the summer of 1913?

A. Yes.

Q. Do you remember when the Alaska-Juneau Company first applied the water of Gold Creek to use on the mill site above Gastineau Channel?

A. I arrived June 18th, and the water was put to use on the mill site a few days thereafter.

Q. After the 18th of June? A. Yes, sir.

Q. You know the water was put to use a few days after that? A. Yes.

Q. To what use was the water put, Mr. Bradley?

A. Washing off the mill site.

Q. To what extent—that is to say, was the whole volume used, or what part of it?

A. All of the water was used.

Q. You mean all the flume could carry?

A. Yes; the carrying capacity of the flume.

Q. What was the character of that use, as to whether it was a use necessary in connection with mining operations?

A. It was a necessary use in constructing the mill building.

Q. A use ordinarily connected with the construction of mill buildings? A. Yes.

Q. And the water in its application at that time—was any part of it wasted, or was it all put to a beneficial use?

A. It was all put to a beneficial use.

Q. Your construction work was then under way on the mill site?

A. Was then under way and it is still under way.

[1487—1337]

(Testimony of F. W. Bradley.)

Q. Now, you are familiar with the ground covered by the Lotta mining claim, are you?     A. Yes.

Q. First, let me ask you, Mr. Bradley, you are a mining engineer?     A. Yes.

Q. Tell the Court what experience you have had as a mining engineer—what properties you have directed?

A. I have been connected with twenty or twenty-five different companies, and have built and equipped as many properties—I have had 30 years experience.

Q. Will you name some of them.

Judge WINN.—We will concede that Mr. Bradley is a competent mining engineer.

Q. Are you familiar, Mr. Bradley, with the ground embraced within the Lotta mining claim?

A. Yes.

Q. The point where Mr. Ebner indicated to you he intended to build his mill?     A. Yes.

Q. Are you also familiar with the ground embraced within the Cape Horn No. 2 claim, and the locality where a grade has been partially constructed by the California-Nevada Copper Company, in 1910?     A. Yes.

Q. Are you familiar with the conditions concerning that grade, the ground above it, the character of the rock and the character of the slide, and matters of that kind?     A. Yes, sir.

Q. Have you examined the same?

A. I have looked at it from a distance.

Q. Do you know whether that place where this

(Testimony of F. W. Bradley.)

grade has been partially completed is such a place as is suitable at all for the construction of a mill? [1488—1338] A. It is not a safe place.

Q. Now, I want you to explain to the Court fully why it is not a safe place.

A. There was a rock slide in 1901 or '2, came from the mountain side on the west side of Gold Creek, immediately down Gold Creek below this mill site, and the mountain side is still cracked, and the cracks are growing wider, and there is every indication that there will be another rock slide that will cover this mill site.

Q. The point where the mountain side is cracked and growing wider—where is that with reference to the mill site?

A. Back of the mill site and immediately above it.

Q. So that if there should be another slide at the point where the cracks are widening, where would that come down?

A. Would come down on the mill site—by mill site I mean the place that Mackay graded off.

Q. You don't mean to testify that it is a mill site?

A. No.

Q. What is the character of the ground on the Lotta claim with reference to its suitability as a point for the construction of a mill?

A. A 100-stamp mill on the Lotta claim is a safe and suitable place.

Q. Is there any other place except that mill site on the Lotta that is safe and suitable for the construction of a large mill in that neighborhood?

(Testimony of F. W. Bradley.)

A. Yes; around Cape Horn.

Q. There may be some points there that would be suitable for a mill?     A. Yes.

Q. Is there any suitable place in the immediate neighborhood of where this grading is being done?

A. No; not at that point; there is further up the creek. [1489—1339]

Q. Further up the creek?     A. Yes.

Q. Now, are you familiar with the location of the Ebner tunnel upon the ground, Mr. Bradley?

A. The new one?

Q. Yes.     A. Yes.

Q. Would the fact that that tunnel was started, or had been started there, would that be any indication that a mill was to be put in at Cape Horn No. 2?

A. Could be; yes.

Q. But the fact of that tunnel being driven there, would that be any indication to you or any one else going up there that a mill was to be built at Cape Horn, or in that vicinity—by Cape Horn I mean Shady Bend.     A. No.

Q. The tunnel would be equally suitable for a mill on the Lotta claim?     A. It would be; yes.

Q. Now, as to the development of power for use in connection with the development work on the Ebner property, can such power be developed by the installation of a compressor and other apparatus on the Lotta claim?

(Not answered because of objection.)

Q. Let me ask this question—would it in any wise hamper the operations of the Ebner Company, or the

(Testimony of F. W. Bradley.)

Ebner Gold Mining Company, or whoever might own that Ebner mine, in connection with the operation of that mine if they were required to turn the water into the creek above your intake there, in connection with their development of the mine?

A. No; it would not.

Q. Mr. Bradley, do you know the quantity of power measured in horse-power that Mr. Muir said would be required by his [1490—1340] company in connection with the future development of the Ebner mine, exclusive of mill operations?

A. Yes.

Q. How much horse-power did he say it would require? A. He said 464.

Q. How much water would that require—how many miner's inches of water would it require to develop that quantity of power at the point where the Mackay grade is if the water were taken at the head that they have there at the Mackay grade?

A. Under 470 foot head and 80 per cent efficiency, it requires 380 inches.

Q. Is 80 per cent efficiency—is that the per cent that is usually calculated for that sort of machinery?

A. Under fair conditions; yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. What time did you say, Mr. Bradley, that Mr. Ebner met you in San Francisco—what time did you say it was that you had these conversations with Mr. Ebner in San Francisco?

(Testimony of F. W. Bradley.)

A. In the winter, some time, of 1902 and '03.

Q. Some time in the winter of 1903?

A. No; 1902 and '03.

Q. Where was it you had this conversation with him? A. At his room in the Occidental Hotel.

Q. In San Francisco? A. Yes.

Q. Just tell me, Mr. Bradley, what conversation you had with Mr. Ebner, as well as you can remember.

A. He called on me in my office in the Crocker Building with reference to negotiations that had been had at this end for the sale of the Ebner property to the Alaska-Juneau Company, [1491—1341] and he asked me to call at his room in the hotel, that he had a large number of maps, papers and documents and didn't like to bring them up to the office, so I went with him to his room in the hotel, and we looked over the maps and talked the matter over, and he told me that they were about to build a building for 40 stamps and had graded out for 60 stamps more, and that this was an opportunity for us to buy the property if we wanted it before they went to work and built the 100 stamps; that if they built the 100 stamps we would have no opportunity of acquiring the property.

Q. He indicated to you where they were going to build this 100-stamp mill, did he? A. Yes.

Q. Now, Mr. Bradley, if he indicated to you where he was going to build this 100-stamp mill on the Lotta claim, what was the necessity of your examining that property—you said a while ago, I think,



(Testimony of F. W. Bradley.)

that you examined that property for the purpose of ascertaining whether you would buy it as an outlet for the Alaska-Juneau Company? A. Yes.

Q. But when he told you they were going to build the mill down at the Lotta claim, you didn't think there was any necessity of purchasing the property, did you? A. After the examination.

Q. Well, then, it wasn't the fact that Mr. Ebner was going to build a mill down on the Lotta claim that led you to examine the property, was it?

A. I examined the property the same as I would any other property; there was a proposition put up to us that it was something the Alaska-Juneau should acquire—that the ore and property was better than our own.

Q. But if he was going to build a mill down on the Lotta claim [1492—1342] and you knew that before you examined the property, then the matter that he was going to build the mill down on the Lotta claim wasn't one of any moment or that influenced you or kept you from purchasing the property?

A. No; if the ore had been much better grade than our own ore, we would have bought the property.

Q. But you felt perfectly safe upon this verbal assertion that Mr. Ebner made to you in San Francisco, and relied upon him building a mill upon the Lotta lode claim, did you—you felt perfectly easy on account of that conversation and confident that he was going to build the mill on the Lotta claim, did you?

A. Felt perfectly at ease about where he was

(Testimony of F. W. Bradley.)

going to finish the use of the water.

Q. You felt perfectly at ease about that water until 1910, and relied on Mr. Ebner's word, did you, until 1910?

A. I relied on conditions—his word had nothing to do with it; it was the slide conditions that I relied on.

Q. Didn't you state that your conduct was to a great and material extent governed by the fact that Ebner was going to take the water out and return it on the Lotta lode claim—didn't you testify to that to Mr. Hellenthal? A. Yes; to a great extent.

Q. Now, then, Mr. Bradley, didn't you and Mr. Kinzie both testify in this case in the first instance that you had conceived of this plan of opening up your property in the year of 1901, didn't you?

A. It was conceived in 1899.

Q. 1899? A. Yes.

Q. Then you had conceived all this plan of opening up your property before you ever had a talk with Mr. Ebner about where he was going to build his mill, hadn't you? [1493—1343]

A. I wasn't here until 1900, though I had conceived the thing in 1899.

Q. Didn't you hear Mr. Kinzie state that he got a report of this that was running back in 1899 or 1900, and that that was the time you had conceived of this plan of opening up this property?

A. That was the time I had conceived of several plans.

Q. And you had several plans of opening up this



(Testimony of F. W. Bradley.)

property, and have testified to them all, have you?

A. It has always been a very serious problem.

Q. But you say that this plan of building a mill down here on the beach, and which Mr. Kinzie testified about, was conceived of before having this conversation with Mr. Ebner?

A. That was one of the plans that was considered.

Q. Then, when you conceived of that plan of opening up the property you didn't consider anything about Ebner returning the water on the Lotta claim, did you?

A. There had been locations made in 1899 to cover the water of Gold Creek.

Q. In 1899? A. Yes.

Q. Now, Mr. Bradley, being an active mining engineer do you want the Court to understand that you remained in this condition of mind for over eight or ten years, relying upon Mr. Ebner having stated to you that he was going to put a mill in at the Lotta lode claim and return the water to Gold Creek, without taking any further steps than you did in taking up the water?

A. Relying on what he said and what he did.

Q. When is the last time he did anything looking toward that, Mr. Bradley, do you remember?

A. Yes; the last place he used the water, he dropped it in Gold Creek— [1494—1344]

Q. I say, when was the last time Mr. Ebner took any steps toward putting up any mill on the Lotta claim? A. I don't know.

Q. Do you know when he built that old building

(Testimony of F. W. Bradley.)

there that has been used as an air-compressor house?

A. I know about when; yes.

Q. You know all these years that that building has been used as an air-compressor house, don't you?

A. Yes; that is the only thing that has been in it.

Q. Do you remember the year it was built there?

A. About 1900—somewhere along there.

Q. You know there has never been any attempt to install in that building anything more than that air-compressor, don't you?

A. I know to the contrary, there has been an attempt made to install stamps there.

Q. When was that made, Mr. Bradley?

A. That was made when the building was built.

Q. That was made, then, some ten years prior to August 1, 1910, wasn't it?      A. Around that; yes.

Q. Any other steps, now, that you remember Mr. Ebner took toward the completion of any mill there and installing machinery in it sufficient to run 100 stamps?      A. Only what he told me.

Q. Only what he told you in 1903?

A. Yes, or '02; it was the winter of 1902-'03.

Q. Now, then, on your direct testimony in this case, Mr. Bradley, you didn't state anything about your plans that you conceived in 1899 in opening up and developing the Alaska-Juneau Company's property being dependent in any wise at all upon Mr. Ebner's putting the water in at the Lotta lode claim—returning it to the creek, did you? [1495—1345]

A. No; they were not my plans—the plans that were handed to me when I got here.

Q. And all of your plans of opening up this prop-

(Testimony of F. W. Bradley.)

erty were conceived of before you ever had any conversation with Ebner, weren't they?

A. It has been a great problem and there have been a great many plans considered.

Q. Where have you considered—you had one plan down below, where you built your mill between here and Sheep Creek—now, what other places did you have in view?

A. That is where we placed the tunnel; another place we had in view was in Silver Bow Basin when we bought some property from the Nowells.

Q. Now, where is that with reference to where your mill is now, and where your compressor is at Snow Slide gulch?

A. About 800 feet, I should say, or 700 feet away.

Q. Well, if you had built a mill there you would have had to take the water out of Gold Creek way above the Ebner mill, wouldn't you?

A. We would have taken it out where we take it out right along.

Q. If you built a mill 800 feet higher up the creek, could you have gotten your water from the present intake? A. Not from the present intake.

Q. You would take it way up above the Ebner mill, wouldn't you? A. Yes.

Q. That would be above Ebner's present dam?

A. That would be in Silver Bow Basin.

Q. It would be above Ebner's present dam and the old dam that has been used by the Ebner people, wouldn't it? A. Yes.

Q. Now, then, when you conceived of that plan,

(Testimony of F. W. Bradley.)

you didn't consider anything about Ebner returning the water to Gold Creek on the Lotta claim, did you?  
[1496—1346]

A. That plan was considered with all the other plans; it was all a financial problem and a question of working very low grade ore.

Q. Did you personally examine this property in 1902 or '03, or did you have Mr. Kinzie or some one else examine it?     A. I had others examine it.

Q. Were you up there on the ground at all during that examination?     A. No.

Q. Now, Mr. Bradley, what conversation did you say that you had with me in the year of 1910 concerning the right of way across a piece of property which your company was to deed to the Jualpa Company?

A. I said that Mr. Kinzie originally had some understanding with Mr. Hyle that we were to have a reservation of that for a right of way for the flume, and you replied that probably Mr. Hyle would agree to that if that was the understanding, and you called on me to get a deed and I said I would like to make that reservation in the deed.

Q. Where were you, Mr. Bradley, when that took place?     A. The conversation?

Q. Yes.     A. Treadwell.

Q. Do you remember what date it was?

A. Between July 22d and August 2d.

Q. Between July 22d and August 2d of what year?

A. 1910.

Q. Now, you stated a while ago that you finally got a deed with those reservations in it?

(Testimony of F. W. Bradley.)

A. I said that I prepared a deed with those reservations in it and sent it to you.

Q. It never was accepted, was it?

A. No, it was not. [1497—1347]

Q. And suit was commenced? A. Yes.

Q. And finally a straight deed was made from your company to Hyle without any reservations for a right of way in it?

A. That is the way it wound up; yes, sir.

Q. There was never any deed accepted from your company by any one representing Hyle with any such reservation in it, was there?

A. There was such a deed prepared by me and sent to you.

Q. Do you remember when you prepared that deed?

A. That was in August, 1910.

Q. Where were you when you made that deed?

A. San Francisco.

Q. Are you sure that was in August, 1910, Mr. Bradley? A. Yes.

Q. You are sure that was in August, 1910?

A. Yes; I have got the deed in my pocket.

Q. The one that was rejected? A. Yes.

Q. Now, did I understand you to say that the building of a mill—100-stamp mill, and the operation of it on the Lotta lode claim would be just as advantageous to the Ebner property as building one down near Shady Bend would be? A. Yes.

Q. Mr. Bradley, do you know how much above any mill that would be built on the Lotta lode claim that

(Testimony of F. W. Bradley.)

the present new tunnel of the Ebner Company would be above it?

A. Oh, it would be about the elevation of a 100-stamp mill; the mill site on the Lotta is about 540 feet, and the elevation of the tunnel is about 390 feet.

Q. How much, according to that, would the mill be above or below the level of the tunnel?

A. About 150 feet? [1498—1348]

Q. Above it? A. Yes.

Q. Above the level of the tunnel? A. Yes.

Q. You consider, Mr. Bradley, as a mining expert, do you, that the building of a mill there and having to lift the ore in that manner is as good and practical a way to build a mill as to build one down near the mouth of the tunnel where there would be little or no elevation of the ore?

A. That is not a correct statement of the question; you would have to lift the ore at Shady Bend.

Q. How much would you have to lift it there, according to your figures?

A. If a mill was built—a 100-stamp mill—you would have to lift it about 50 feet.

Q. Are there places in the neighborhood of Cape Horn No. 2 lode claim that a mill could be built where there is less elevation than that? A. A small mill.

Q. Such as a 100-stamp mill?

A. At great expense, certainly.

Q. Do you consider it good mining, Mr. Bradley, to first run a tunnel cross-cutting another piece of property, and then leave the portal of the tunnel and



(Testimony of F. W. Bradley.)

go further up the creek, following up that tunnel and going say at an elevation of about 200 feet above the mouth of your tunnel, and build a mill and operate it and use that tunnel in opening up and developing the property?

A. You don't have to go 200 feet, to begin with—150 feet.

Q. It is then 150 feet from the portal of the tunnel up to the Lotta claim?

A. It is 150 feet—you would have to go 50 feet more, that [1499—1349] would be 200 feet. There is very little more expense in hoisting ore 200 feet than hoisting it 50 feet, and besides you are saving a long haul there.

Q. Would you go up, Mr. Bradley, on a piece of property, about midway on the property, when it is on an incline that the Ebner property is, to work, or would you go to the lowest point to work it?

A. If the upper place is the safe place, I would go up there.

Q. Then your testimony that you would go up and build it on the Lotta lode claim is because at the lower end of that property, near the portal of the tunnel, there isn't a good place to build a mill?

A. Not a safe place; no.

Q. Is that the reason you testified that this property could be operated just as well at the Lotta claim as at the portal of the tunnel?

A. And the further reason that you save that long haulage of the ore.

Q. This elevation of ore in mining is not a very

(Testimony of F. W. Bradley.)

practical thing and miners try to avoid it, don't they, Mr. Bradley?

A. They avoid it, but they are not afraid of it if they have to do it.

Q. Have you examined the ground in and about the Lotta lode claim, especially for the purpose of determining whether or not it would be a safe place to build a mill?

A. Went especially, and can answer your question now.

Q. When did you do that, Mr. Bradley?

A. A few days ago.

Q. Then this scheme about building a mill on the Lotta claim is something that originated with you a few days ago?      A. No, it is not.

Q. Never had originated in your mind when you had that conversation [1500—1350] with Mr. Ebner in 1902, had it?

A. I knew what he told me.

Q. That is the first time you ever heard or thought anything about building a mill on the Lotta claim, is when you had this conversation with Mr. Ebner?

A. No; I had seen the claim for several years before that.

Q. Still that old mill stood for ten or twelve years and there was never any effort made by Ebner to use it as a mill, no stamps installed, and yet all that time you relied upon the conversation you had with Mr. Ebner?

A. I knew what he did; I knew he used the water



(Testimony of F. W. Bradley.)

there and he turned it back to Gold Creek at that point.

Q. He didn't use it for milling purposes, did he, at that air-compressor?

A. No; but it was started for a mill.

Q. Ten years prior to August 1st, 1910?

A. About that time.

Q. Now, Mr. Bradley, what head of water would the Ebner people have if they built a mill down in that gulch on the Lotta claim, providing they had the same head that they have now in taking the water down to the air-compressor? A. About 240.

Q. What is the head of the water at Shady Bend, from the penstock down to where it is graded off for a mill site?

A. That has been stated here in court at 427 feet.

Q. What would be the comparative efficiency of the water at those two different heads, taking, of course, the same size pipes?

A. It would be in proportion of 240 to 427.

Q. The efficiency down at Shady Bend would be about how many times that up at the Lotta claim?

A. There would be no difference in efficiency; the same water [1501—1351] would give that much more power, in proportion as much more power as 427 is times greater than 240.

Q. Take the capacity of the new flume of the Ebner Company, and suppose you take that water, Mr. Bradley, that amount, and conduct it to a penstock just where the old penstock is above the old air-compressor of the Lotta claim—take that same

(Testimony of F. W. Bradley.)

amount of water with the head it would have at Snow Slide gulch—the capacity of the new flume—what would be the horse-power developed compared with the number of miner's inches in water?

A. If you gave it the same head it would give the same horse-power; you could go up the creek and have the same head on the Lotta you now have at Shady Bend.

Q. We could go a way up the creek above the Ebner dam, on somebody's property—property that we don't own and don't know who it belongs to, and bring it down the creek, and bring it down the creek if we didn't interfere with anybody's rights, and get the same head of water at the Lotta lode claim that we now get at Shady Bend?

A. You might be able to do it on your own property without going on anybody else's property.

Q. Now, Mr. Bradley, answer me this question—what would be the comparative power with the same head—you have got the power we would have taking the water from the old Ebner penstock, 2,000 miner's inches capacity—what power do you figure that would develop with the head there is at that place if it was conducted down and applied to use on a mill at Shady Bend?

A. If the head at one place is 240, and if the head at the other place is 427, the same water will give as much more power at the greater head as the greater head is times more than the lower head. [1502—1352]

Q. Can you give that, approximately?

(Testimony of F. W. Bradley.)

A. Do you want me to divide it and multiply it out?

Q. Have you figured out in miner's inches of water what the power would be at Shady Bend—you figure that to be equivalent to one horse-power, do you?

A. It is about that.

Q. What do you figure a miner's inch to be up at the old compressor?

A. It would be the same if the head was the same.

Q. I mean, the head at the old compressor?

A. It would be as much less as 240 is less than 427.

Q. That would pretty near cut the power in two, would it not, Mr. Bradley?

A. Well, if Shady Bend was 500 and the head at the Lotta is 250, yes, it would cut it in two.

Q. And the way it is it would be very near cutting it in two, wouldn't it?

A. Whatever the proportions are.

Q. Now, Mr. Bradley, wouldn't that be something to consider in the way of a mill being built down at Shady Bend, that being at the lower end of the property, being much better than building a mill on the Lotta lode claim?

A. No; not when you are considering the safety of those relative sites.

Q. This great question of safety is figuring in in your consideration, is it?

A. It has to do with it, certainly; I know it has been a problem with the Alaska-Juneau.

Q. The Ebner would have to have pretty near double the amount of water if a mill was built on the

(Testimony of F. W. Bradley.)

Lotta claim, considering it at a head the same as the head is now, as they would if they build down at Shady Bend, wouldn't they? [1503—1353]

A. That has already been answered.

Q. That is true, isn't it?

A. That is pretty near true; yes.

Q. Now, then, what would you figure on doing with the tailings, Mr. Bradley, if a mill was built up there in that gulch on the Lotta lode claim?

A. Well, a 100-stamp mill, the tailings wouldn't hurt very much.

Q. Do you think a 100-stamp mill would be the only size mill that would work the Ebner property to advantage?

A. No; if you are going into more stamps than that you would go on the beach.

Q. Oh, that is what you would do?

A. That is what you will do, too.

Q. If you had the direction of the Ebner Company's business, that is what you would do, is it?

A. No; I say that is what the Ebner Company will do.

Q. How do you know?

A. I know what Mr. Muir stated.

Q. Now, what would you say about it if they put up a mill something like the capacity you are going to put up here, what would you do with the tailings on the Lotta lode claim?

A. You couldn't build such a mill on the Lotta lode claim; there is only room for about 150 stamps in this one place.

(Testimony of F. W. Bradley.)

Q. You say that the Ebner property runs along about the same per ton in its values as the Alaska-Juneau, from the examination you made, did you not? A. Yes.

Q. And you have deemed it necessary, in order to work the Alaska-Juneau property, to put in stamp-mills of sufficient capacity to almost double that of the Treadwell, haven't you?

A. Yes; that is what we will have to do. [1504—1354]

Q. That is good mining business on low-grade ore, is it? A. We have to do it to make it pay.

Q. Don't you think that any one having hold of the Ebner property, being about the same character of ore as yours, will have to do about the same thing?

A. If they want to put in more than that, they couldn't put it in at Shady Bend, or on the Lotta, either.

Q. Now, then, if they put in a 100-stamp mill—what capacity would you say a good mill would have—how much ore per stamps is the modern way of handling ore?

A. Depends on how you handle it.

Q. Well, what are you contemplating, Mr. Bradley, in your mill down here at the beach—how much per stamp daily?

A. We want to get 30 tons if we can.

Q. Now, suppose a mill of that capacity, if they were to handle that much ore per stamp, and a 100-stamp mill was put in on the Lotta lode claim, how

(Testimony of F. W. Bradley.)

would you advise getting rid of the tailings at that point?

A. The winter freshets would take care of them until somebody stopped you.

Q. And you people would be the first people to stop them, would you not, Mr. Bradley? A. No.

Q. Do you think it would be practical, Mr. Bradley, to dump the tailings of a 100-stamp mill of the capacity per stamp that you have testified to, to dump them into Gold Creek, and that it wouldn't interfere with your intake?

A. Mr. Lewis would stop you before we would.

Q. Did you hear Mr. Kinzie's testimony yesterday? Do you think it would be practical, Mr. Bradley, to dump that many tailings in the creek per day into Gold Creek, for you people to utilize the water for the purposes you are using it, taking the water at your present dam? [1505—1355]

A. No; we would have a problem there.

Q. And probably have a lawsuit?

A. No; Mr. Lewis would have the lawsuit.

Q. If you got down to where you could not use the water on account of the dumping of the tailings in the creek, do you think you would idly sit by and wait for Mr. Lewis to act?

A. He would be taking the water out up above us.

Q. Now, Mr. Bradley, you have testified, and I believe Mr. Kinzie has too, that at certain portions of the year up there there is not water enough in the creek for both your company and the Ebner Company, taking it at the points it is being taken at, and



(Testimony of F. W. Bradley.)

being used at the places it is being used now; if the Ebner Company should put in a mill on the Lotta lode claim they would require a great deal more water, wouldn't they, than they now require—that is, for a 100-stamp mill, everything else being equal and at the head that is on there at the present time?

A. If they built a mill there they could use more water there; yes.

The COURT.—Use more water there than where?

A. Than they are using now.

Q. And they would have to use more water—twice as much nearly, to get the same efficiency as they would have to use down at Shady Bend, or where the present workings are?

A. If they didn't build a flume at a higher head.

Q. Well, you know that the property ends right up above that dam, don't you, Mr. Ebner?

A. No; it goes up the creek some distance above—there is the exhibit.

Q. How much further?

A. Oh, about a thousand feet.

Q. You think it goes up the creek about a thousand feet? A. Yes. [1506—1356]

Q. Now, when the water would be let into Gold Creek, say there would only be a sufficient amount to fill a flume of the kind that the Ebner Company now has—the new flume—would there be any difficulty experienced in handling tailings in Gold Creek?

A. There would not be enough water for battery purposes.

(Testimony of F. W. Bradley.)

Q. The lower the water would get in Gold Creek, the more difficulty there would be in handling tailings, if you put a mill in on the Lotta claim?

A. The water would get so low you would not have enough for battery purposes, let alone power.

Q. I am taking it for granted we had enough water to fill a flume of the same capacity, and then they would put in a 100-stamp mill on the Lotta claim, they would experience a lot of difficulty, wouldn't they, taking the tailings down the creek?

A. Not from a 100-stamp mill.

Q. You require a whole lot of water and you have only 35 stamps and you have the stream to carry off your tailings, and you use one-third of the capacity of the flume,—

A. We have 50 stamps.

Q. You haven't washed the tailings down from 50 stamps, have you?

A. 10 stamps are not finished, and the Chilean mills are not all installed.

Q. What are the highest number of stamps that you have completed?

A. 40.

Q. And you and Mr. Kinzie have testified it is necessary to have one-half of the capacity of your flume to wash away the tailings on that hillside?

A. Not all of it to take care of the tailings.

Q. Then they would need more up at the Ebner mill if it was built on the Lotta lode claim, because the fall of the creek is nothing like as steep as where your mill is? [1507—1357]

A. I know; but we cannot dump right in the town—we have to carry our tailings a long distance;



(Testimony of F. W. Bradley.)

we have got to carry our tailings several miles.

Q. Don't you know, Mr. Bradley, running a stamp mill of 100 stamps capacity, and each stamp handling the same amount of ore that you are handling at your mill—don't you know it would dam up the mouth of your flume down there and play havoc with your workings entirely?

A. If you had that kind of a mill there; yes; but there is 100 stamps up above the Ebner dam and it has never been impractical to run the Ebner mill.

Q. I am talking about before we ran a mill on the Ebner property. Your contention is that they dumped some tailings for several years up at the old little mill, and it hasn't stopped up your flume?

A. Yes; so has the Perseverance.

Q. That is two or three miles above your present dam, isn't it? A. Yes.

Q. And then you talk about the Perseverance, they had a mill of 100 stamps—that is two or three miles up above the Ebner mill, isn't it?

A. Something like that.

Q. This mill on the Ebner property would be approximately how far from your dam and intake, that is built there?

A. Two or three hundred feet—something like that.

Q. How near the portal of the new tunnel—the new Ebner tunnel—do you consider it would be safe to put up a 100-stamp mill, Mr. Bradley?

A. I haven't measured off the ground or examined it, and I don't know; you would have to go up the

(Testimony of F. W. Bradley.)

creek—it is all a question of money.

Q. Now, Mr. Bradley, I want to ask you this question, as a [1508—1358] mining man—these working tunnels and cross-cut tunnels that you have run in and across your property, and when I say your property I mean that of the plaintiff company—from Snow Slide gulch, you take the ore from the mouth of that tunnel and bring it down to your mill, don't you? A. Yes.

Q. Now, when a cross-cut tunnel is run that way, isn't it the usual plan to have your mill below the mouth of your tunnel and as near to it as you can practically get it?

A. That is a good way to have it.

Q. It saves the conveying of the ore and the hauling of the ore, and saves that much expense, don't it?

A. Yes; that is one of the plans we had at one time.

Q. Now, you would never go on the Ebner property, as a mining man,—supposing you didn't know anything about the facts in this case, but were going up there as a mining man to look over the property, and you see this tunnel down at Shady Bend and know the extent of the property back above it, you would immediately conclude they were going to have a mill down somewhere this side of the tunnel, wouldn't you?

A. That would be a natural conclusion to come to.

Q. This thing of running a tunnel and building a mill along the center part of it is somewhat unusual in building mills and operating mines, isn't it?

(Testimony of F. W. Bradley.)

A. Oh, no.

Q. I will ask you another question, Mr. Bradley: Isn't it always proper, and isn't it a practice that governs mining men to a great extent, that they want to work the property from the lowest end of the property—that is, if your claims run back up and keep running up at an elevation, the best way to work your property is to work it at the lowest part, isn't it? [1509—1359]

A. Well, generally work from the top down.

Q. Why didn't you build your mill up at the top of the mountain instead of building it down at the beach?

A. We thought this was a better plan.

Q. Now, answer my question, leaving all jokes out— isn't it always of the greatest importance to a mining man to use gravity as much as possible in handling these low-grade ore bodies?

A. If you go over on Douglas Island, the ore is all hoisted.

Q. That is a mistake that you would cut out and do the other way if you could, wouldn't you?

A. Yes.

Q. You didn't conceive of the point at the mouth of your Gold Creek tunnel as being a safe place to build a mill, did you?

A. No.

Q. Now, Mr. Bradley, something about this slide and about the unsafety of the Cape Horn location for a mill—where was it and when was it you saw any cracks in the hillside over there?

A. Every time I have looked at it.

Q. Where have you looked at it from?

(Testimony of F. W. Bradley.)

A. I have looked at them from the Alaska-Juneau flume line.

Q. From the Alaska-Juneau flume line?

A. Yes.

Q. That is on the opposite side of the creek?

A. Yes.

Q. About how far away were you viewing this hillside, where you saw cracks in it?

A. I was close enough for me to see the cracks.

Q. Where are the cracks with reference to the place that is graded off for a mill—graded by Mackay?

A. They are on the hillside back of the Mackay grade, and above it. [1510—1360]

Q. This slide that took place some time ago didn't in any way interfere with or cross over any of the ground that Mackay has graded off, did it?

A. No, because he made his grade after the rock slide.

Q. Now, slides are things that are apt to take place any time on mountains, are they not?

A. On that mountain where it is all cracked up; yes.

Q. Right above this ground where they propose to build a mill on the Ebner property there are timbers that evidently have been there for hundreds of years, aren't there?

A. When a slide comes it will take the timbers out.

Q. And if a slide ever comes up above your mill it will take the timber out, too?

A. If it does come—we have examined that for

(Testimony of F. W. Bradley.)

cracks and have found none.

Q. There is timber standing there above the Ebner mill site just about as old as any timber standing above your mill site, isn't there?

A. Yes; there are no large rock slides adjacent to our mill site.

Q. How long ago has it been since you broke earth above your mill? A. A year ago this spring.

Q. In the last year, then, you haven't had any slide, have you?

A. Nothing like the slide on Gold Creek.

Q. Have you had some slides?

A. There are places where rock slides come, and you have to keep out of the way of those.

Q. And you have endeavored to do that?

A. Yes.

Q. You have done first rate in keeping out of the way of them, have you?

A. We know where the slides come and we get in between them. [1511—1361]

Q. How far away then, Mr. Bradley, from where Mackay has graded off this mill site on the Cape Horn No. 2 claim do you think that a mill of 100 stamp capacity could be built—have you examined the ground for that purpose?

A. Yes; I think the best place is on the Lotta.

Q. And only place? A. That is the best place.

Q. Best place, to go right up in the center of the property, when there is quite a lot of property below it?

A. The Lotta isn't the center of the Ebner prop-

(Testimony of F. W. Bradley.)

erty; it is the lower side of the property.

Q. You concede that to be the lower end of the Ebner property, do you?     A. Yes.

Q. What do you suppose that new Ebner tunnel is run for over there, Mr. Bradley?

A. That is to explore the ground; if the ground will pay they will put up a mill and work it.

Q. It would be a good working tunnel, wouldn't it?     A. Yes.

Q. You know that tunnel wasn't run with any expectation of building a mill on the Lotta lode claim, don't you?

A. I cannot tell what they will do until they get plans and carry them out.

Q. You think they will go to the Lotta lode claim yet, do you, Mr. Bradley?

A. No; I think they will go to the beach.

Q. You had some trouble with slides down at your tunnel at Snow Slide Gulch, didn't you—took out one of your air-compressors down there?

A. That was a snow slide.

Q. A snow slide gets away with things about the same as other slides, don't it? [1512—1362]

A. Unless you know where the slide is going to come.

Q. You knew where it was going to come, still you installed your air-compressor there and let the snow take it out, didn't you?

A. That was an emergency proposition.

Q. You put that in there to try to get the water put to use as soon as possible, and made it a tem-



(Testimony of F. W. Bradley.)

porary affair, didn't you?

A. Made it serve until something else could be put in its place.

Q. Put in there for the purpose of showing diligence in getting the water to use and to head off the Ebner people, wasn't it?

A. Put in there to develop our own property and carry on our own business.

Q. Yes; you never would, as a mining engineer, install an air-compressor where you knew that the snow was going to take it out—that is, if you were doing it on any permanent basis?

A. It all depends on conditions; you can make a sacrifice sometimes on an emergency proposition.

Q. And you abandoned the exact place you put in that air-compressor and came on down the creek and installed the one you have in there now?

A. We abandoned it when we had another one running.

Q. What did you do—leave that old air-compressor up there? A. Yes.

Q. What is the object of leaving it up there—do you intend to dig it out some day and use it?

A. I haven't made any definite plans about that.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Judge Winn has interrogated you in regard to the capacity of a 100-stamp mill, and in that connection has asked you what is the capacity of your mill,—what it is per stamp—your mill on the beach; is

(Testimony of F. W. Bradley.)

that a stamp-mill in the direct [1513—1363] sense of the word, or a stamp-mill equipped with regrinding apparatus?

A. A stamp-mill equipped with regrinding apparatus.

Q. How does that affect the capacity of the stamps? A. Increases the capacity of the stamps.

Q. Is that the character of stamp-mill you referred to as the Lotta being a suitable place for?

A. No.

Q. What was the character of stamp-mill you were speaking of for the Lotta?

A. I was speaking of 100 stamps—wasn't considering the kind of a mill we are building on the Alaska-Juneau.

Q. What would be the capacity of such a mill on the Lotta as compared with the capacity of the Alaska-Juneau mill with the regrinding apparatus?

A. About 6 tons to the stamp.

Q. As compared to the 30 tons per stamp in your plant?

A. If we succeed in doing it; I said that is what I hope we can get out.

Q. And the quantity of tailings that would be deposited from a mill on the Lotta claim would be 600 tons per day?

(Objection and question not answered.)

Q. The tailings that would be dropped by that character of mill, would they hamper your operations there?

A. No; no more than the Perseverance mill or the

(Testimony of F. W. Bradley.)

old Alaska-Juneau mill has hampered the Ebner operations.

Q. What is the size of the Perseverance mill?

A. That was 100 stamps.

Q. The building on the Lotta claim, Mr. Bradley, what kind of a building is that—what is the character of that building as to what sort of a mill would that building house?

A. The ordinary stamp-mill.

Q. The ordinary stamp-mill? [1514—1364]

A. Yes.

Q. Such as the Perseverance, and such as you have testified would crush 6 tons per day? A. Yes.

Mr. HELLENTHAL.—I think that is all.

Recross-examination.

(By Judge WINN.)

Q. Now, Mr. Bradley, you want us to build one of the old-fashioned stamp-mills that would only handle 600 tons a day, whereas you are building one that is handling two or three times that much. At the lower stage of water wouldn't about 600 tons a day tailings which are dumped into the creek dam up your flume?

A. You couldn't make that much tailings then, you wouldn't have battery water enough.

Q. I don't mean at the very low stage of water but at the intermediate where, say, there would be sufficient to fill a flume to a capacity of two or three inches, then wouldn't 600 tons a day have a great deal of effect on your flume?

(Testimony of F. W. Bradley.)

A. If there was very little water there we would be bothered.

Q. You know between where that mill would be built and where your dam is it is a rocky gorge, and a pretty swift current in high water—not so swift in lower water—and there is nothing particularly there to catch the tailings until they would get down to your dam, is there?

A. No; it would be probably a mass of ice.

Q. But when there is a mass of ice there, there wouldn't be much mining, would there?

A. No; there wouldn't be water enough to mine at all.

Q. At the Perseverance they had two or three mills before they gave out, didn't they?

A. Where they brought the tailings through.  
[1515—1365]

Q. That mill has never been running since you built your dam, has it?     A. No.

Q. Been no mining up there by any mill since you built your dam?     A. No.

Judge WINN.—That is all.

(Question by the COURT.)

Q. Mr. Bradley, in 1902, when you had the conversation with Mr. Ebner—at the time in 1902, '03, '04 or '05—were there any mining operations being carried on below the lower side line of the Lotta?

A. No; I think not.

Q. And who did you think owned the ground from the lower side line of the Lotta on down the creek?

A. Oh, at that time we were doing assessment

(Testimony of F. W. Bradley.)

work on the Oregon, and believed at that time that we owned the ground.

Q. Well, the Oregon is only one claim.

A. The Oregon covers the creek over to the Colorado and Idaho placer,—all our property.

Q. Yes; but you were not taking any water on the Oregon claim, were you?

A. No; when we had no use for it we couldn't take it.

Q. Where was Mr. Lewis taking it?

A. He has the domestic water supply for the town of Juneau in that Jualpa Basin; they would take it from Gold Creek between our dam and the Ebner 100-stamp mill site on the Lotta claim.

Q. Where was the Electric Light Company taking water from?

A. They would take their water from the lower end of the Jualpa Basin, at an elevation of about 240 feet above sea level, just above where Mr. Lewis takes out his domestic water.

Q. What I am trying to get is this: If Mr. Ebner's representations [1516—1366] to you led you to believe that you could get the water when the Ebner people dropped it on the Lotta claim, how did you know that in the course of time and before you could get the water, the lower proprietors and operators, or some other lower operators might not take the water away from you?

A. I knew they were entitled to whatever they were taking, and I knew we would have to let enough go by for them.

(Testimony of F. W. Bradley.)

Q. Didn't you know the Ebner people would be entitled to it if they wanted it on some other proposition?

A. Yes; but I believed that we were the lowest of any who would use it, and I rested easy under that condition.

Q. You might have rested on the proposition that the Ebner people wouldn't take the water, but if somebody else would take the water wouldn't that upset your plans?

A. Yes; if some intervening right interfered; but any intervening right would have had to respect the right of the Electric Light Company and Mr. Lewis.

Q. Suppose they made terms with Mr. Lewis and the Electric Light Company, you would still be upset in your plans?      A. Yes.

Q. Your plans would have come to naught.

A. Yes; still there is no other domestic water supply for Juneau that runs through the winter months; that is the only supply that is available.

The COURT.—That is all.

(Questions by Judge WINN.)

Q. You know there is other mining property below there; Lewis had some mining property he took up below your dam; and then there is the Boston Group of claims down here that there has been some water used on out of the creek, too, don't you, Mr. Bradley?

A. Yes. [1517—1367]

Q. Did I understand you to define where Mr. Lewis' intake of his water is—the intake of Mr. Lewis' spring, or whatever it may be, is just this side



(Testimony of F. W. Bradley.)

of the first Gold Creek bridge and just below the Electric Light Company's intake?

A. Yes; just below the intake of the Electric Light Company's flume.

Q. And about how far below your intake up at your dam is Lewis' intake?

A. Oh, that would be—I am guessing at it now—I would say several thousand feet, but there is a long flat through there, and our intake would be about 420 feet above sea level and the Electric Light Company is 240 feet above sea level, and there is no chance for any one to utilize that drop in the creek.

Q. Since 1902 and '03 didn't the Jualpa Company put in that big dam and that big flume up there?

A. Yes; but Lewis stopped them.

Q. But they were trying to get the water out of the creek, weren't they?

A. Yes; but he stopped them.

Judge WINN.—That's all.

(Questions by Mr. HELLENTHAL.)

Q. Mr. Bradley, are there any mines below the Ebner mine—below your intake—that would be apt to use water—whose operations would be liable to require the use of water that would interfere with your operations—are there any properties that you would be taking any chance with?

A. Well, there are other prospects below, but nothing that, in my opinion, would develop into a mine that would require the use of water.

Q. Are there any of those properties whose development work [1518—1368] would be apt to inter-

(Testimony of F. W. Bradley.)

fere with your use before you could get at it?

A. None.

Mr. HELLENTHAL.—That is all.

Q. (By Judge WINN.) Just one question on that, Mr. Bradley. There has been, for the last two or three years, some work going on looking toward the development of this Boston group of claims that is way down below your property?

A. I have examined the Boston, too, and know what it is.

Q. According to your estimation, the Boston group is no claim whatever—there are no mines worth going ahead on—that is your opinion?

A. It hasn't been developed yet; no.

Q. You are not swearing what may be developed there, are you? A. No; I cannot do that.

Q. You know there is a bunch of claims that they are doing work to keep up the assessment work on, and have used water on them for hydraulicking, don't you? A. Yes.

Judge WINN.—That's all.

(WITNESS EXCUSED.)

(Whereupon court adjourned until 10 o'clock tomorrow.) [1519—1369]

## MORNING SESSION.

August 12, 1914, 10 A. M.

Mr. HELLENTHAL.—Your Honor, I want to offer this morning in evidence the paragraph of an order of the New York Court made in the matter of the Ebner Company Receivership, the order I refer

(Testimony of F. W. Bradley.)

to being an order presented to this Court by the defendants and attached to an affidavit made upon the preliminary hearing in this case; the affidavit is the affidavit of John R. Winn, and to that affidavit is attached this order of the New York Court. The section that I refer to is section 15, appearing on page 5. The order is quite lengthy and I only offer section 15 on page 5.

(Whereupon said order was read into the record as follows:

“ORDERED that said Martin, pursuant to the offer made in his said petition, convey to said Ebner Gold Mining Company the Mining Claim ‘Cape Horn No. 2’ by quitclaim deed, upon receipt by him of said receivers’ certificates for One thousand dollars (\$1,000), which said receivers are directed to deliver in exchange for such deed, and that said property, when so conveyed, shall be subject to the lien of the certificates herein authorized.”)

Mr. HELLENTHAL.—That is all of our rebuttal testimony.

PLAINTIFF RESTS. [1520—1370]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal F. J. WETTRICK, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant  
(Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. You are the same F. J. Wettrick that was on the stand heretofore in this case and testified?

A. Yes, sir.

Q. Mr. Wettrick, you testified to some extent on your previous examination concerning the location of the Lotta lode claim, and in your testimony you took into consideration at that time, I think, some monuments that were found on the Lotta lode claim in the year 1910. Now, I will ask you to look at the exhibit which has been offered in this case as a copy of the patent of the Lotta lode claim and several other lode claims, and I ask you if you are familiar with those lode claims that are mentioned in the patent of the Lotta and which were patented at the same time? A. I am.

Q. Now, I will ask you, Mr. Wettrick, if you have examined the field-notes and also the description of the various claims that are set out in this patent, so as to ascertain the metes and bounds, calls and dis- of several claims, so as to ascertain the matters I tances and ties of this one group of claims, consisting of several claims, so as to ascertain the matters I asked you about?

A. Yes; I have looked them over a number of times.

Q. Now, I wish you would state to the Court, just briefly with respect to the field-notes and courses and distances and ties in the patent, as to where the description commences and [1521—1371] follow it

(Testimony of F. J. Wettrick.)

around on Defendant's Exhibit "S," in a general way, so as to show the Court how these claims may be tied up to each other and to one another.

(Objection and question reasked.)

Q. Now, I wish you would take the field-notes, Mr. Wettrick, as they are set forth in the patent which you have in your hand, and, leaving out the monuments that you have already testified concerning which you found upon the Lotta lode claim in 1910, and prior to August 1st, I wish you would go ahead with these field-notes pertaining to that survey and show to the Court what other ties and other monuments you found on the ground in 1910, that would be of assistance in locating the Lotta claim upon the ground from the field-notes of the Lotta patent.

A. In the patent notes of the Lotta lode claim, the paragraph beginning with the word: "Beginning for the description of lot No. 88 at a post marked No. 1 U. S. Survey No. 8, from which a 10-stamp mill bears South 49° 30' East 140 feet distant"—that is one.

Q. I wish you would indicate to the Court on this exhibit as to where that tie is, Mr. Wettrick?

A. Post No. 1 is the northwest center end post of the Taku Gold and Silver lode, and the tie from that post No. 1 directly to the mill is the one I have just read; the ties from corner No. 1, being the northwest center end stake, designated No. 1, following on that same northwest end line of lot No. 88 in this way: "Thence, second course, South 33° 45' East 79.3 feet intersects southeast boundary line of said

(Testimony of F. J. Wettrick.)

lot No. 76-B," being the Webster mill site, from which, of course, the corner posts are common by direct bearings, and three of which corner posts were upon the ground in 1908 and 1910; following on that north side line of the Taku Gold and [1522—1372] Silver, being lot 88, according to the patent notes, "800 feet to a point" on said side line "from which tunnel No. 1 bears South 19° East 35 feet distant," being a tunnel on the side line; there is another tunnel on the same side line which is given in the next paragraph as tunnel No. 2—"Tunnel bears South 70° East 75 feet distant" from a point 800 feet from corner No. 2 on the same side line, and then the notes follow around.

Q. Now, I might ask you, Mr. Wettrick, about this tunnel—did you, in 1910, make any effort to locate any one of those tunnels to which this call is made?

A. Yes, sir; I located one tunnel and by that I satisfied myself sufficiently as to the location of the corner posts of the claim that I didn't care to check up the tie to No. 2, because I had sufficient information to guide me in the relocation of the claim.

Q. Now, I will ask you, Mr. Wettrick, to take and mark upon this Defendant's Exhibit No. "S" with your red lead pencil what other and additional corner posts that were of any assistance in 1908 and 1910 in the location of the Lotta lode claim other than the ones you have already marked on the Lotta lode claim and on its boundary lines?

A. Corner No. 2 of the Webster mill site, Lot 76-B; corner No. 3 of the same survey; corner No.



(Testimony of F. J. Wettrick.)

4 of the same survey; corner No. 2 of the Keystone lode was also in place, as was—

Q. What is that corner post 2 of the Keystone common with?

A. Corner No. 2 of the Keystone is identical with and the common corner with corner No. 6 of the Crown Point lode; and corner No. 2 of the Crown Point lode, being near the dam and easily found, was also in place in 1910; these corner posts, taken together, checked with the lines of the survey of [1523—1373] this group of claims within a very reasonable limit of area.

Q. And you included in that group of claims the Lotta lode claim, did you? A. Yes, sir.

Q. Now, outside of the field-notes of the survey, claims that are included in this patent, including the Lotta lode claim—is there any other tie or any other patented claim that ties to any other corner of the Lotta lode claim?

A. Yes, sir; corner No. 1 of the Royal is identical with corner No. 3 of the Lotta lode claim, and it is tied to the mouth of the tunnel on the Royal claim, which is, I believe the discovery tunnel and easily found—visible from almost any point on the road.

Q. Now, I will ask you, Mr. Wettrick as a surveyor, with the data that you have just mentioned, including, of course, the field-notes, courses, distances and ties as they are indicated in the patent, and the monument and posts you found upon the ground, including all of those also that you found on the Lotta lode claim, whether or not just prior to Aug-

(Testimony of F. J. Wettrick.)

ust 1st, 1910, a person going on the ground in good faith could have easily or otherwise ascertained the boundary lines of the Lotta lode claim?

A. There was and could have been apparently no trouble in locating the Lotta lode claim—the side lines as well as the end lines—within a very reasonable degree of accuracy at that time.

Q. Now, Mr. Wettrick, Mr. Stewart in this case, laid considerable stress in his testimony upon some call that was made to the bank of Gold Creek in the field-notes of the Lotta lode claim; I will ask you as to *whether not* the call to the bank of a creek is, in your judgment as a surveyor, any [1524—1374] more reliable than these other calls which you have indicated?

A. In my opinion is even a poorer natural object to tie to than the mouth of a tunnel, or possibly to a stamp-mill, for the reason that if you attempted to relocate the claim from a creek some 25 or 30 feet wide, you might go up or down the creek a considerable distance to get a call, as you call it, from a corner post to check with that given in the field-notes; it is a sliding scale, as you can see from Defendant's Exhibit "S," the creek makes a considerable angle—practically 45° as it crosses the lower side line of the Lotta, and it might slide the Lotta up or down for a considerable distance; and for the same distance from corner No. 1; it seems to me it would be difficult to set your transit up in the middle of the creek to start to relocate your lines; I wouldn't use it and I don't think anyone

(Testimony of F. J. Wettrick.)

else would use it in order to relocate a claim accurately.

Q. Do you remember approximately how wide the creek is along about the lower side line of the Lotta lode claim, Mr. Wettrick?

A. Yes; it varies from 30 to 40 feet; I believe the waters don't occupy that wide a space, but the bed is practically 35 or 40 feet wide.

Q. Now, Mr. Wettrick, you have stated, I think, that you have been a United States Deputy Mineral and United States Deputy Land Surveyor in Alaska?

A. Yes, sir.

Q. Over what period of time has that extended?

A. Since 1908.

Q. When did you first come to Alaska?

A. I think I came to Alaska in 1905, and I have followed the [1525—1375] engineering and surveying business since 1907 in Alaska.

Q. Surveying both mineral and nonmineral claims for patent and otherwise?

A. All kinds of surveying and engineering work.

Q. Have you come in contact with miners and prospectors who were mining and prospecting in and about the vicinity of Juneau, and say within its boundaries that would commence at Auk Village—and I suppose it means the old Auk Village up the channel here, not the one in Juneau—and extending in a northwesterly direction back to the Canadian border line, and then following that boundary line on to the Taku River, then following the Taku River and Taku Inlet on out to Stephen's Passage, and down

(Testimony of F. J. Wettrick.)

Stephen's Passage to the place of beginning—you understand the question, do you?     A. I have.

Q. Have you made any locations of mining claims and water rights over that period of time within those boundaries?

A. I have for clients of mine, and acting as agent for other parties, and I have written a great many water notices for prospectors and miners in and about this vicinity.

Q. Now, in coming in contact with the miners that you have stated you have come in contact with during this period of time, and prior to August 1st, 1910, did you become familiar with the methods of locating water rights where a person starts to take up water and apply it to a beneficial use?

A. Well, I became familiar with the mode and method used by some people; I apprehend that there is a different mode or method for nearly every individual who desires to locate a water right.

Q. You have heard read by Mr. Hellenthal, haven't you, during [1526—1376] the course of this trial, a certain set of miners' rules and regulations that were passed sometime in the 80's concerning the location and appropriation of water—you heard those rules, didn't you?     A. I heard them; yes.

Q. I will ask you, Mr. Wettrick, speaking from the experience you have had, as to whether or not those miners' rules and regulations have been followed generally by the miners in this area which I have described to you?

A. They have never been followed to my knowledge

(Testimony of F. J. Wettrick.)

in detail; certainly those parties with whom I have discussed locations of that kind have never followed it in detail.

Q. What has been the custom, so far as your experience, Mr. Wettrick, has taught you, that prospectors and miners have followed in locating and taking up water and water rights in and about Juneau, and within the area I have mentioned to you in the former question?

A. The rules followed and the customs followed by those with whom I have worked and for whom I have worked in that respect, have been that the posting of a notice was wise and proper and mandatory; a description in the notice, of course, where possible where the water is to be used; approximately how it was to be used—that was a good thing to put in a notice in order to advise the prospector and the traveler in that vicinity of the fact that there is at least a notice of appropriation.

Q. Now, I will ask you from your experience, Mr. Wettrick, that you have had and the conversations you have had with miners, and those with whom you have come in contact in your official business, as to whether or not prior to 1910 and up to the present time—I mean prior to 1910, covering the [1527—1377] period of time in which you have been in Alaska, as to whether or not any particular rule has been followed about the recording of location notices with respect to time?

A. No definite rule has ever been followed by those for whom I have worked and with whom I have

(Testimony of F. J. Wettrick.)

worked; sometimes the parties asked me whether they would have to record it within 90 days, thinking it was the same as a mining claim; I looked into the matter myself and advised them it was not necessary to record within 90 days, but it would probably be better to do so, if convenient for them; I am aware that the statute does not require the recording of a notice, and upon that knowledge I have advised them; I have, however, advised them that it would be better, if it was convenient, for them to record it, for fear they might lose a location notice or something like that—to place it on record; but so far as there being any specific or definite time, that has never been my opinion, nor the opinion of those with whom I have worked nor for whom I have worked; as I said, sometimes they thought it was the same thing as a mining claim, requiring the recording within 90 days.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wettrick, don't you know as a matter of fact that 80 per cent of the water locations made in the Harris Mining District have been recorded within 10 days after the time of posting the notice—you know that, don't you?     A. No, sir.

Q. Have you ever consulted the records about that?  
[1528—1378]

A. I haven't consulted the records by going through each book and each page to find that out for myself.



(Testimony of F. J. Wettrick.)

Q. You don't doubt the testimony on that subject of those who have consulted the records, do you?

A. I have no reason to doubt it.

Q. Don't you know as a matter of fact that everybody in this district records most everything—that is a general custom among the miners in this district to record not only water notices but town site laws and everything else?

A. I believe it is; yes; but it isn't the custom to record within 10 days.

Q. And to record the notice right away as soon as the location is made, no matter what the location is—you know that, don't you?

A. No; I don't know anything of the kind; furthermore, I don't believe it.

Q. You know, however, it is a general custom to record everything?

A. Yes; that is true; I think the majority of notices that are posted sooner or later are recorded.

Q. Are recorded? A. Yes.

Q. You know, do you, of any water location notice in this district other than the location notice made by the Mr. Tripp that was not recorded within 10 days—I am speaking of the Harris Mining District?

A. I don't know now, but I think I can find some for you.

Q. Do you know of any, I am asking you?

A. I am not quite sure of that—I think I know of two.

Q. Where are they?

A. I am not quite sure whether it is within 10 days

(Testimony of F. J. Wettrick.)

or whether [1529—1379] it is a few days over ten days.

Q. Which are they?

A. They are the location of the waters on the side of Mt. Juneau.

Q. By whom?

A. By L. G. Hill and W. W. Casey; I think they were over 10 days in recording.

Q. When was that location made?

A. If the records show it less than 10 days I am mistaken; I made out that notice myself and I know that I didn't advise Casey at that time to record it because I had it in the office for quite a few days afterward; I know there was no intimation given by me to record it.

Q. When was that made?

A. I don't remember exactly—1914.

Q. 1914—this year.      A. Yes, sir.

Q. And you made out that notice?

A. I didn't typewrite it; I dictated the greater portion of it.

Q. In that location notice did you state the place of use, Mr. Wettrick?

A. I stated the place of use with great particularity.

Q. With great particularity?      A. Yes.

Q. You knew that that was one thing you ought to put in your notice?

A. No; I did that because of your lengthy dissertation on the requirements of that kind of things in this same case when it was tried once before.

(Testimony of F. J. Wettrick.)

Q. Do you mean to say that what I said gave you some instructions? [1530—1380]

A. No, sir; it didn't do anything of the kind.

Q. You, however, did it? A. I did; yes.

Q. In that notice did you state the date of location?

A. I think so.

Q. Do you know what day of the year that notice was posted? A. No.

Q. It was posted in May, wasn't it, 1914?

A. If that is what the record shows, it was; yes.

Q. You don't know what the record shows on that subject? A. I haven't looked at it.

Q. And recorded on May 11th, 1914, wasn't it?

A. If that is what the record shows it must have been.

Q. Recorded within 10 days after the date of location? A. What was the date of location?

Q. I am asking you if it was recorded within 10 days after the location or not?

A. You have better knowledge of that than I have; you have a copy of it in your hand.

Q. Was it recorded within 10 days after the date of location—yes or no?

A. That depends entirely on what the record shows; it was recorded when the record shows it was—I don't remember when.

Q. What other location did you prepare or have anything to do with that you know anything about?

A. Oh, I prepared quite a number.

Q. Give one other one?

A. I prepared a location notice for the water of the

(Testimony of F. J. Wettrick.)

creek at Point Hilda.

Q. Where is that?

A. On the west coast of Douglas Island. [1531—1381]

Q. When was that?

A. That was, I think, in 1911—1910 or 1911, thereabout.

Q. Who made that location—in whose name?

A. One Charles Anderson, I think.

Q. Charles Anderson—who else?

A. I don't know, I don't remember.

Q. You don't remember when Charles Anderson Esquire, located a water right that you had something to do with?

A. I think that was in 1911.

Q. Was that notice recorded?

A. I think so; I know it was posted; I know that he went there to the ground in a gas boat.

Q. Was it recorded within 10 days?

A. He told me he had posted it, but I don't know about that.

Q. Did it state the place of use?

A. Not exactly, not definitely I don't think.

Q. How definitely?

A. I don't remember about that; I think it stated that the waters were to be conveyed by flume or pipeline to the shore of Stephen's Passage—that is, I think, as definite as it was made.

Q. Stated the place on the shore of Stephen's Passage, didn't it? A. I think so.

Q. Stated the place on the shore of Stephen's Pas-

(Testimony of F. J. Wettrick.)

sage where it was to be conveyed by pipe-line or ditch?

A. That would be the natural and logical thing to do.

Q. And it is a fact, isn't it, that Mr. Anderson recorded that notice within 10 days?

A. That I do not know; if the record so shows, why, he did.

Q. You don't know in whose name he posted the notice, do you? [1532—1382]

A. I think that Charley Anderson posted it in his own name; I made it out for him, I know.

Q. You are not sure of that?

A. Yes; I made it out for him.

Q. You don't know whether it was signed by him?

A. I am pretty sure it was.

Q. Pretty sure?

A. Yes, and one or two others over at Douglas whose names I don't recall now.

Q. They were also on the notice? A. Yes, sir.

Q. That is the best of your recollection?

A. Yes, sir.

Q. What other location now, Mr. Wettrick, did you have anything to do with that you know anything about?

A. I prepared and witnessed the posting of a notice of water of a creek flowing into the Taku River.

Q. Which side? A. North side.

Q. That would not be in the Harris Mining District, would it? A. Yes, sir.

Q. That is this side of the Taku Inlet?

(Testimony of F. J. Wettrick.)

A. Yes, sir; according to your description it would be.

Q. What is the name of the creek?

A. It has no name.

Q. Whereabout is it situated?

A. Near the international boundary line.

Q. Who posted that notice?

A. I witnessed the posting of it—in fact, I posted it for Mr. Pond, he is the claimant to the water.

Q. How recent was that? [1533—1383]

A. That was in May of this year, 1914.

Q. Did you record that notice?

A. No, sir; that notice has not yet been recorded.

Q. Thought you would keep that off the record?

A. No; I simply wasn't in any haste about recording it.

Q. You knew that there was a question whether the notice ought to be recorded, to say the least, within 10 days, in this litigation, didn't you?

A. No; I don't know that I did.

Q. Don't you know anything about that?

A. I don't think there was.

Q. Did you state in that notice the place of intended use? A. Yes.

Q. You did state it? A. Yes.

Q. But you don't know whether there was any need of recording it within 10 days or not?

A. No, I simply stated that the place of intended use was on the banks of Taku River.

Q. What was that location made for?

A. To give notice to all parties to whom it might



(Testimony of F. J. Wettrick.)

concern that Mr. Pond desired the use of that water and appropriated the same.

Q. At the point—when was that posted, did you say?

A. That was posted in May, 1914, I believe it was early this spring, I know.

Q. At that same time you posted some Turner Lake notices, didn't you?

A. Not the same time, no; some time afterwards.

Q. You recorded those within 10 days, didn't you?

A. I didn't record those, no. [1534—1384]

Q. They were recorded within 10 days, weren't they?

A. I don't know; all I did was to give to Pond a copy of the notice for him to do with as he pleased.

Q. And Mr. Pond recorded it himself?

A. He recorded it himself.

Q. You had nothing to do with it?

A. No; I asked him the other day whether he had recorded it and he said he had.

Q. You also designated the place of use in those notices, didn't you?

A. Yes; in nearly every one with reasonable particularity.

Q. With such particularity as the circumstances of the case would admit of—that is true, isn't it?

A. About that.

Q. You made inquiry of Mr. Pond to find out whether those notices had been duly recorded and he said they had—is that right?

A. I asked him if he had recorded the notices, and

(Testimony of F. J. Wettrick.)

he said he had; that was for no purpose whatever.

Q. Now, what other notices did you have anything to do with that you know anything about?

A. I don't recall right now the names of any of the creeks or places where I might have had anything to do with; we posted others, I think, however, on the tributary of Montana Creek in Montana Basin; I would not be quite so sure about that.

Q. That would not be in the Harris Mining District, would it?

A. Not according to your description that you read to me here a moment ago, no; but their recording district is Juneau just the same.

Q. Your understanding is, Mr. Wettrick, that the Harris Mining [1535—1385] District extends to Montana Creek—your personal understanding is that the district at present extends to Montana Creek and takes that in?

A. No; I wouldn't say that the Harris Mining District hasn't got very definite boundaries; and I don't know that my understanding was it extended up to Montana Creek—I don't think so; however, I know this that location notices have been written around the Montana Basin and in the description they have been referred to as being in the Harris Mining District; that must have been done in mistake if the Harris Mining District doesn't extend that far.

Q. You are not sure whether the Harris Mining District takes in Montana Creek or not?

A. That description is a very indefinite thing and I

(Testimony of F. J. Wettrick.)

am not prepared to say what the old timers would consider the boundaries of the Harris Mining District to be.

Q. At the present time some of the locators of the Harris Mining District designate Montana Creek as being within the Harris Mining District, you say?

A. No; I didn't say that; I said I am quite sure that some location notices of quart. claims made in that vicinity had the language that it was in the Harris Mining District, District of Alaska; that might have been due to a habit.

Q. Might have been due to a habit? A. Yes.

Q. You wouldn't say for sure that the boundaries of the Harris Mining District take in Montana Creek? A. No; I would not.

Q. Now, about those Montana Creek notices, who were they made for?

A. I really don't know who signed them, I rather think L. G. Hill— [1536—1386] one was made for him, I think.

Q. Did you state the place of use in those notices?

A. Oh, I don't remember; I suppose I did with such degree of particularity as circumstances admitted of.

Q. Did you record them within 10 days?

A. I don't think they were recorded at all.

Q. Don't you know about that now, Mr. Wettrick? What other notices did you have anything to do with?

A. I don't remember any others; I cannot just recall any others right now.

(Testimony of F. J. Wettrick.)

Q. Now, what notices do you know of that anybody else posted or recorded, or posted and did not record,—what other water rights do you know of, of your own personal knowledge, where you know, by personally coming in contact with anyone, what those parties have done and how they have taken up the water?

A. I have come in contact with quite a good many during my travels over the country here in my business, but I cannot recall definitely an instance of that kind, because it probably didn't make enough impression upon my memory or me to retain it.

Q. How is that?

A. I don't recall any others with any degree of certainty.

Q. Do you know of any notice now that was ever posted and not recorded within 10 days?

A. Other than those I have mentioned?

Q. Yes.

A. I cannot just say what the notices say or who signed them.

Q. Not any particular one?      A. No.

Q. Whoever told you that the rules of the Harris Mining District [1537—1387] relating to the appropriation of water were not in force to the extent of requiring a record within 10 days?

A. Nobody, I don't think ever told me that; I just gleaned that from the general customs followed and my understanding of it.

Q. No one ever told you that?

A. That understand, of course, was based upon

(Testimony of F. J. Wettrick.)

discussions of the water right laws in the territory, and such other laws as would come to the notice of a man somewhat in that business.

Q. No one, however, told you that they were not the rules in this Harris Mining District; and if so, who told you?

A. No one told me that the rule to record within 10 days was not the rule here, because I had never heard the 10-day rule mentioned, therefore I would not have been told that; the first time I ever heard that mentioned was in this case.

Q. When did you come to this country, Mr. Wettrick?

A. I think I came here in 1905, the fall of 1905.

Q. What was your occupation after you came here?

A. My occupation after I came here, the first two years I was instructor in mathematics and science in the Juneau High School.

Q. How long did you act in the capacity of schoolmaster in Juneau?      A. Two years.

Q. Then what did you do?

A. Then I was engineer for the Cordova and Copper River Railroad.

Q. And you were out to the westward?

A. Yes, sir.

Q. How long were you out to the westward?

[1538—1388]

A. I was there during the seasons that construction was going on, that was until November.

Q. Of what year?

(Testimony of F. J. Wettrick.)

A. That would be 1907, wouldn't it?

Q. I don't know.

A. Yes, well, two years following 1905 would bring it 1907.

Q. 1907, then where did you go?

A. From there?

Q. Yes.

A. I went to Seattle and east, home.

Q. How is that?

A. I went to Seattle and from there to Ohio.

Q. How long did you stay there?

A. I stayed in Ohio about two months, I think.

Q. Then where did you go?

A. I returned to Seattle.

Q. How long did you stay there?

A. About two months more, I think.

Q. What did you do in Seattle?

A. I was employed by the firm of Cottrall & Whitworth, engineers, surveyors and contractors, in laying out—and had charge of laying out the Ladd Addition to the City of Seattle.

Q. How long were you there?

A. Oh, I don't remember exactly.

Q. About how long?

A. I think three or four months.

Q. Then where did you go?

A. I came to Juneau, then, I think.

Q. How long did you stay in Juneau?

A. I have been here ever since.

Q. When did you attend the University of Washington? [1539—1389]



(Testimony of F. J. Wettrick.)

A. Oh, I attended the University of Washington in 1903 and '04.

Q. Didn't you attend the University of Washington since that? A. Oh, yes.

Q. When?

A. During the winter months of 1909, '10 and '11, I think.

Q. You were there during the school year, weren't you?

A. A portion of the school year; my business wouldn't allow me to spend the whole year there, so I had to double up on the work and do it in four or five months.

Q. You were there such portions of the winter as you found convenient during those three years?

A. Yes.

Q. However, during those months that you were at school, that would take you five or six months every year, wouldn't it?

A. About five months, I think.

Q. Where were you the balance of the time?

A. In Juneau.

Q. When did you graduate there, Mr. Wettrick?

A. I graduated in 1905, I think.

Q. I mean this last course, the law course you took? A. 1911 or '12.

Q. 1911 or '12? A. Yes, sir.

Q. You took a law course there, didn't you?

A. Yes, sir; the years of 1910, '11 and '12, instead of 1909, '10 and '11.

Q. You never practiced law, Mr. Wettrick, did

(Testimony of F. J. Wettrick.)

you?      A. Not actively.

Q. Didn't you live in Seattle a while practicing law?

A. I lived in Seattle one winter, during the winter months, I think, from November until about May, until the season opened up here. [1540—1390]

Q. In what year?      A. 1912.

Q. That was after you graduated?

A. Yes; I did a little work in partnership with my brother.

Q. Then you came back to Juneau?      A. Yes.

Q. Then the experience you have had in Juneau was during the times that you were not in Seattle or some place else, wasn't it?

A. Yes, naturally.

Q. What miners did you ever talk with about the miners' rules and regulations?

A. Oh, I couldn't give you the names in particular.

Q. Can't you recall the name of a single miner?

A. I suppose I could if I wanted to take the time, but in my line I have talked with a great many about that.

Q. I wish you would give me the name of one that you talked with?

A. J. G. Peterson, with Mr. Tripp, Mr. Ebner, and I talked with a great number of others.

Q. You talked with them regarding the rules pertaining to the appropriation of water?

A. Not particularly with respect to that, but about the appropriation of water, and many other things,

(Testimony of F. J. Wettrick.)

and remarked about it being difficult to know just exactly what to do, and what was necessary to do, in order to appropriate water and things of that kind.

Q. When was it you had these conversations?

A. Oh, more or less ever since I came to the country.

Q. Been talking it over all the time?

A. No; not all the time—that is not the right word to use.

Q. Just sometimes, for other purposes?

A. Yes; sometimes. [1541—1391]

Q. When did you ever talk to Mr. Tripp on this subject?

A. I haven't seen Mr. Tripp for some time—I don't remember exactly.

Q. When did you talk to him about the water rules, if at all?

A. I wouldn't be positive just when; my recollection would be that it was the first time, when we first commenced to do work under his directions and for him, which would be in 1908.

Q. You know that these rules were all recorded in the office of the recorder, didn't you? A. No.

Q. Never found that out?

A. I might have—in fact, I never thought enough of them I know to make a copy of them or know if there was a copy in my office; I might have come across them in the Recorder's office, but I don't remember it. If there was a copy in my office I might have come across them.

Q. You are the successor of Mr. Garside as the

(Testimony of F. J. Wettrick.)

partner of Mr. Hill, aren't you?

A. I wouldn't say the successor—Mr. Hill and I formed a partnership.

Q. Mr. Garside was an engineer together with Mr. Hill at one time, wasn't he?

A. He and Mr. Hill were partners for a number of years, I understand.

Q. And you followed up his work?

A. Not necessarily.

Q. Did you ever look over the records of Mr. Garside to find out what the rules relating to the appropriation of water were?      A. No, sir.

Q. You don't know what the records of Mr. Garside show upon that subject?      A. No; I do not.

Q. You know that Mr. Garside was an old-timer in this country [1542—1392] don't you, Mr. Wettrick?      A. Yes.

Q. You know he was a man who had quite a knowledge of matters of that character?

A. Yes, sir; considerable experience too.

Q. You never took the trouble to ascertain from Mr. Garside's papers what the rules on this subject were?

A. No; I never took the trouble to look up Mr. Garside's records; in fact, I don't know where they are; I have seen a number of maps of his.

Q. I hand you a little pamphlet marked Plaintiff's Exhibit No. 33—state if you are not familiar with that little pamphlet bearing Mr. Garside's name.

(Testimony of F. J. Wettrick.)

A. I don't think there is one of this kind in the office; I haven't seen anything like it.

Q. That is the same Mr. Garside you succeeded, isn't it?

(Question not answered because of objection.)

Q. G. W. Garside was the man that you succeeded, that was Mr. Hill's partner before you, wasn't he?

A. Yes; that is true—George W. Garside.

Q. Do you know whether that is the same George W. Garside that published this pamphlet which I handed you?

A. I imagine it is if that was published by him.

Q. Mr. Wettrick, when anyone came to you and asked you your advice in regard to the location of water did you look up the Federal Statutes?

A. Oh, I have read some statutes on the law regarding the appropriation of water at various times, and also some text-books on that subject.

Q. Did you look up the statute in force in the Territory of Alaska that provides that the miners of the organized mining [1543—1393] district shall have the power to provide for the recording and location of water notices—you found that statute, didn't you?

A. I don't remember whether I read that, but I think I did; yes.

Q. You found that that section of the statute, Mr. Wettrick, provided that the miners of the mining district could provide for the recording of water notices, didn't you?

A. No; I think my understanding of it was that some time ago, before the statutes were quite as defi-

(Testimony of F. J. Wettrick.)

nite about the point, that the local customs might be recognized or would be recognized to a certain extent.

Q. That is your understanding of the law; you didn't find that statute that provided that the miners of the local district might provide for the recording of the water notices?

A. I will say no; and I found a statute that makes the recording of lode claims mandatory, but not of water notices.

Q. Knowing of such a statute, did you make any inquiry as to what the rules were in this district—did you go to the recorder's office to ascertain whether the miners had provided for the recording of water notices?

A. Oh, I don't know that I did; do you mean whether I inquired of the recorder?

Q. Yes.

A. No; I didn't inquire of the recorder, because I didn't think he knew anything more about it than I did.

Q. You knew the records were all kept in the office of the recorder if you wanted to find out what the rules of the miners upon that subject were, didn't you?

A. As I said before, I very likely came across the rules in [1544—1394] making up various records in the office of the recorder, but my knowledge was probably based *up* what customs and rules were actually followed rather than those that might have been on record, and my knowledge of the customs and



(Testimony of F. J. Wettrick.)

rules followed was gathered by my discussions with mining men and prospectors.

Q. I am asking you what actual miners did you ever discuss that rule with—not promoters, but actual miners?

(Question not answered because of objection.)

Q. What actual miner told you what the customs were with relation to the appropriation of water?

A. I don't know as anyone told me actually what the customs and rules were; I say I discussed it with various mining men and prospectors from time to time, different phases of these things.

Q. Nobody ever told you it was not the rule to record a water notice within 10 days, did they, Mr. Wettrick?

A. As I stated before I have never had occasion to ask anyone whether that was the rule or not.

Q. No one ever told you, Mr. Wettrick,—no miner ever told you that a water notice did not have to be recorded within 10 days after the date of location, did they?

A. I don't think so in those words.

Q. No one ever told you that in just those words, or any other words, did they?

A. I couldn't say positively whether they did or not—whether by intimation or otherwise they told me, or not.

Q. Now, you say that a tie to a creek is not as good a tie, in your judgment, as a tie to a stake that you find in the ground, is that right? [1545—1395]

A. I said it was not as good a tie as a tie to the

(Testimony of F. J. Wettrick.)

mouth of a tunnel or a stake.

Q. Now, let's see—when did you come to this country—in 1905, wasn't it?     A. Yes; 1905.

Q. All these claims, the Webster mill site and all the upper claims had already been patented long before that?     A. I think so.

Q. Whatever stakes you found upon the ground were merely stakes that marked certain corners?

A. Yes; stakes that were marked and were the corners and the survey numbers for those claims.

Q. When you say a corner was in place, you mean by that that you found a stake upon the ground that was marked for that corner?     A. Yes.

Q. As to the authenticity of those stakes, you don't know anything about that—they were set before you came?

A. I know a little more than that would seem to indicate.

Q. You have no personal knowledge of the correct location of those corners,—I am talking about the actual placing of those stakes in the ground—you don't know anything about that?

A. I don't by reason of the fact that I was present when they were posted, although I have a partner whom you referred to as having been a partner of Mr. Garside, who made the patent surveys and we have from time to time discussed the placing of those old stakes, and he told me that Garside who had placed them, told him a great deal about the placing of those stakes, so I have a little more direct information [1546—1396] than you think.

(Testimony of F. J. Wettrick.)

Q. So the information that you have upon that subject is only hearsay from your partner, and it is hearsay that he got from Mr. Garside?

A. It is hearsay to a certain extent, yes.

Q. That is all you know about it, isn't it?

A. Know all about what?

Q. The placing of those stakes, the genuineness of those stakes?

A. Yes; that is all I know about the placing of those stakes.

Q. You know that in placing the stakes the course is at least two degrees off?

A. Yes; the course differs now about two degrees.

Q. You know also that the canyon of Gold Creek where it crosses the Lotta claim is not to exceed 40 or 50 feet wide?

A. Yes; that is right, I think.

Q. The bed of the stream is not as wide as that?

A. No.

Q. And the bed of the stream might shift from side to side from 40 to 50 feet at places? A. Yes.

Q. That is the widest it could possibly shift?

A. I think so; yes.

Q. The stream itself flows through that gorge having a maximum width of 40 or 50 feet, within a well-defined formation, does it not?

A. In some places it is pretty well defined.

Q. The stream cannot change, going in one way or the other—

A. You mean Gold Creek on the Lotta?

Q. Yes.

(Testimony of F. J. Wettrick.)

A. At the lower side line of the Lotta, no; it cannot change [1547—1397] a great deal where it crosses the side line of the Lotta.

Q. You know that the point at which it crosses the side line of the Lotta as you have found those stakes upon the ground, it differs 3 to 400 feet from what it should be from the patent notes of the Surveyor General, don't you?

A. I don't think it is quite that much, but there is considerable error in the location of that stream as platted upon the plat by the Surveyor General's office and the land office.

Q. It would be a matter of 3 or 400 feet; something like that?

A. I think it is 300 feet; I don't remember exactly.

Q. You found, when you located your claim upon the ground that the tie to the creek is at least 300 feet off?

A. Yes; that is the point at which the side line of the Lotta purports to cross the stream as given in the field-notes is at least 300 feet difference from what it actually is on the ground now.

Q. You also know, as a matter of fact, from experience that you cannot place that claim upon Gold Creek, and change that one point and preserve the ties given in the patent plat, do you not, Mr. Wettrick? A. No; that is not quite true.

Q. Where is the other point it can be placed at?

A. You can shift it up and down.

Q. Do you know also that there is not upon the ground a 10-stamp mill—upon the Ebner property,

(Testimony of F. J. Wettrick.)

don't you? A. I think I do.

Q. There is a 15-stamp mill, but not a 10-stamp mill?

A. I think that mill was later enlarged to a 15-stamp mill, as Mr. Ebner testified to.

Q. But it is not a 10-stamp mill? [1548—1398]

A. No.

Q. The mill as it is on the ground covers considerable area—a large flat mill? A. Yes.

Q. You already testified that the Lotta claim ties to the Royal, and you also note in the field-notes that the Royal ties to the Colorado? A. Yes.

Q. And to the Colorado and the Idaho placer?

A. It is in a little different order than that.

Q. But they do tie in, don't they?

A. Tie together.

Q. You also know that if you give the Colorado the length called for in the patent notes, and start from the initial corner of the Colorado and the Idaho placer, and survey up the creek, that that line of the Lotta would be away up the creek a couple of hundred feet, don't you?

(Not answered because of objection.)

Q. I call your attention now to a map received in evidence as Defendant's Exhibit "B"—on that map the Lotta claim is platted as tied to the creek in accordance with the plat contained in the patent, and marked properly on the map so that the particular position of the Lotta can be identified as so tied to the creek; now, I want to ask you, Mr. Wettrick, if it isn't a fact that that is the only place on the entire

(Testimony of F. J. Wettrick.)

Gold Creek, from its mouth to its source where the claim can be laid and those ties to both sides of the creek preserved—if that is not the only place—I want you to show me another place?

A. Well, Mr. Hellenthal, in order to answer that I will have to say that the creek, being an object that has a width of 25 or [1549—1399] 30 feet, and the fact that it is sort of a variable object, it would depend entirely upon what you considered the center of that stream and what I would call the center of the creek, and locate it from that; in that way I might shift it up or down from where you would put it, because we would not agree upon where is the center of the creek.

Q. Then, assuming that the center of the creek might shift a few feet one way or the other, that wouldn't make more than a few feet, one way or the other, difference in the position of the claim—making that allowance of a few feet, where can this be placed upon the ground, upon the creek, and maintain those ties—if you know of any other place where it can be placed, of course, I want you to show me?

(Not answered because of objection.)

Q. You know all about the conditions of the ground there, don't you, Mr. Wettrick? A. Yes.

Q. Can you identify this map (Defendant's Exhibit "B")?

A. I have seen this map before, and I dare say the position of the creek here is represented correctly; it looks as though it had been surveyed out.



(Testimony of F. J. Wettrick.)

Q. You are familiar with all those conditions on the ground too, aren't you? A. Yes.

Q. Now, having in mind your familiarity with all those conditions, the conditions of the Lotta—you know where the Lotta ties to the creek?

A. Yes, sir.

Q. You know where the Lotta is tied to the creek in accordance with the patent notes?

A. Yes, sir. [1550—1400]

Q. And where the tie is preserved to the creek, just as it is given in the patent notes and the plat attached to the patent? A. Yes.

Q. You saw the patent? A. Yes.

Q. And you know where the claim is just as it is given in the field-notes? A. Yes.

Q. Now, I will ask you if that isn't the only place where the Lotta claim can be placed upon the ground and the ties to the creek preserved—if there is any other place where it can be placed and the ties preserved to the creek—preserved as they are there platted—I want you to tell me where that other place is.

(Not answered because of objection.)

Q. Whether there is another place where the creek can be tied and those ties to the creek can be preserved?

A. By the tie I understand you to mean the call and the distance to the creek—the lower side line, the distance as given in the patent notes—do I understand the question now?

Q. What I want you to tell me, Mr. Wettrick, is

(Testimony of F. J. Wettrick.)

this: In the plat that forms part of the field-notes of the patent, as given in the patent of the Lotta, there are ties to Gold Creek, are there not?     A. Yes, sir.

Q. Now, the question I am asking you is this: Observing that exhibit that you have in your hand, Defendant's Exhibit "B," and observing the point where the Lotta claim is there platted in accordance with those field-notes and in accordance with those ties, I will ask you if the Lotta claim [1551—1401] can be placed upon the ground at any other point along the entire course of the creek, the courses and distances in the patent notes preserved, and the tie to the creek or the two ties to the creek, preserved, than the place where the claim is platted on that exhibit; and if there is any other place where it can be platted and those field-notes and ties preserved, I want you to tell me where that other place is?

A. Oh, I think it can.

Q. Where?

A. It might be shifted up or down some little distance.

Q. How much?

A. That would be pretty hard to determine; it would represent the difference between your tie to the center of the creek and mine; that distance would be enlarged quite considerably when you shift it up the creek.

Q. How much difference would it make—suppose my choice of the center of the creek was on one side, it wouldn't make a difference of over 30 or 40 feet, would it?

(Testimony of F. J. Wettrick.)

A. It might make a difference of several feet.

Q. The canyon is 40 feet at the widest point, and anyone would figure the center of the creek would be right on one side of the canyon—the difference of opinion might vary three or four or five feet, but that would be the highest. A. At least that much.

Q. Now, changing the center of the creek three or four or five feet, how much difference would that make in the location of the claim?

A. Comparatively small; my testimony is that you could shift it one way or the other, and then I also think somewhere along the whole course of that creek I could find a place where I [1552—1402] could place the Lotta lode claim and preserve the ties I have here, because it would be a matter of tying it in the curvature of that creek, and I dare say there would be a number of places that you could plat it correctly.

Q. And preserve the courses and the directions?

A. Within two degrees.

Q. And preserve the courses?

A. Well, I am not prepared to say that I could do that, because I haven't tried it.

Q. You know it cannot be done with that portion of the creek with which you are actually familiar?

A. In the region of the Ebner Gold Mining Company's property there?

Q. Yes.

A. No; it cannot be done except by that shifting which I have mentioned before.

Q. And you are familiar with the entire creek

(Testimony of F. J. Wettrick.)

from Snow Slide gulch to the Ebner dam, aren't you?

A. Yes, I am more or less familiar with the creek all the way up, although I haven't platted it.

(Whereupon court adjourned until 2 o'clock.)

### AFTERNOON SESSION.

August 12, 1914, 2 P. M.

F. J. WETTRICK, on the witness-stand:

Redirect Examination.

(By Judge WINN.)

Q. I will ask you, Mr. Wettrick, if you ever undertook or ever have made any location of the Lotta claim just simply singling out this one tie that is made from some of the corner posts to the creek in running certain courses— [1553—1403]

(Question objected to and not answered.)

Q. Now, that last question that Mr. Hellenthal asked you, Mr. Wettrick, I will ask you if you have any explanation to make of your answer you gave to Mr. Hellenthal?

A. About the location of the Lotta claim?

Q. Yes, sir.

A. Only this, that in locating the Lotta claim, or attempting to relocate the Lotta claim, it certainly would not be good practice to take but one tie, which is merely a result in sketching in topography, and try to relocate a claim from that; but, on the contrary you take into consideration all the ties, and all the information that one could gather with respect to that patent survey and relocate it from all the ties

(Testimony of F. J. Wettrick.)

—that is to say, check the one against the other.

Q. Well, now, in making a location in this way that you have explained, I will ask you if any locations of the Lotta lode claim made in that way would leave the Mulligan notice on or off the Lotta claim?

A. It would throw the Mulligan notice further up the creek—further on the patented ground.

Q. The Lotta?

A. Yes; the Lotta; I think that it would remain upon the Lotta; it might go further up over on the Taku Gold and Silver, if you relied upon the tie to the mineral monument it would remain upon the Lotta claim.

Q. What I meant was to take all this matter into consideration, not any particular tie, but to take all the ties, and take the field-notes, and go upon the ground to locate the claim, I will ask you, in that way whether or not it would be a difficult task, or otherwise, to locate the Lotta claim [1554—1404] upon the ground as it was adjudged by Judgeushman in his decision.

A. (Not answered because of objection.)

Q. Now, Mr. Hellenthal asked you something about certain boundaries of what might have been referred to here as the Harris Mining District—when is the first time, Mr. Wettrick, that you ever ascertained that the boundary lines of the Harris Mining District were such as I indicated in a question to you this morning, commencing at the Auk Village and running the course that I gave you this morning in that question?

(Testimony of F. J. Wettrick.)

A. The first time I remember that I definitely read those over is during this hearing about a week ago or so.

Judge WINN.—I believe that is all.

(WITNESS EXCUSED.) [1555—1405]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal WILLIAM M. EBNER, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of William M. Ebner, for Defendant  
(Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. You are the same William M. Ebner who has already testified in this case, are you, Mr. Ebner?

A. I am.

Q. You perhaps stated in your former examination as to when you came to Alaska, but for fear you did not, I would like to have the year that you first came to Alaska.

A. I first came to Juneau in 1890; that was only a sort of a visit; the first time I came to Alaska was in 1890 and that was a sort of a primary trip to see what I had in Alaska. I had been putting in a lot of money, and in 1891 I came up, in the early spring, to take charge of what was then called the Eastern Alaska Mining and Milling Company's property, now called the Perseverance.



(Testimony of William M. Ebner.)

Q. I think you stated on your former examination as to how long you ran and operated that property. Do you remember whether or not, Mr. Ebner, you took up any water rights while you were running that property that formed part of what is now the Perseverance Company's property, up in Silver Bow Basin?

A. Yes, sir; I located a water right on the left-hand fork of Gold Creek late in the fall of 1891, just before I left for below.

Q. Now, you ran that mill and operated it up until what year? [1556—1406]

A. Up to and including the season of 1893.

Q. Do you remember whether or not you made any other water locations in connection with that piece of property while you were running and operating it?

A. Yes, sir; I made one other water location at what we called, or was called at that time Ground Hog gulch, a small stream that came down over the Rim Rock lode claim; I think that was in '92 or '3, I don't remember just which.

Q. I will ask you if you remember whether or not about June, 1893, you made any location of a water right on Gold Creek.

A. I think I did, some time in the summer of '93—not far from the bridge, the first bridge that you cross.

Q. The first bridge that is crossed going from Juneau up? A. Up into Silver Bow Basin.

Q. You were operating this property during that

(Testimony of William M. Ebner.)

time, that constituted a part of the Perseverance property, were you?      A. Yes, sir.

Q. Now, after you quit operating that property what property did you operate then?

A. In 1894 I operated what is now called the Dora group; the Dora Gold Mining Company's property opposite what is called the Ebner mill.

Q. It is this property that is represented on Defendant's Exhibit "S" as the Dora Group, is it?

A. Yes, sir.

Q. Now, I think you have gone over your locations which you made in connection with the Ebner Company's property so we will leave that out—I think you went over it on your previous examination. When did you state it was that you commenced the operation of what is known as the Ebner Gold Mining Company's properties?

A. I took charge and had charge the season of 1891, the early spring; I came here in April.

Q. The Ebner Gold Mining Company? [1557—1407]

A. No; that is what is now the Perseverance property.

Q. You stated you quit the operation of the Perseverance property in what year?      A. 1893.

Q. What mining property then were you interested in or operating after you ceased to operate this property which forms a part of the Perseverance Company's property?

A. I was still interested in what is called the Perseverance property, and also interested in what is

(Testimony of William M. Ebner.)

now called the Dora group; and during the latter part of the season of 1894 I extracted quite a bit of ore and ran what is now called the Ebner mill, and operated that late in the season, after the other people got through.

Q. Then you had some connection with property near Snettisham or Sundum, didn't you, Mr. Ebner?

A. Later on I acquired interests in Windham Bay.

Q. Did you make any location of mining claims there?

A. Yes, sir; that is, myself and prospectors that I employed.

Q. Now, in connection with this Ebner Mining Company's property, did you make some water locations? A. In connection with the Ebner?

Q. Yes. A. Not in connection with the Ebner.

Q. Now, there is a location notice dated May 25, 1890, of the water from the Southwest gulch No. 1—

A. That wasn't for the benefit of the Ebner Gold Mining Company.

Q. That was another water location you made, though? A. Yes, sir.

Q. In 1899? A. Yes, sir.

Q. Now, then, Mr. Ebner, you left here to go to California in what year?

A. 1909—that is, permanently, in the fall of 1909.  
[1558—1408]

Q. During all the time that you were in Alaska, what business were you either connected with, following or managing?

(Testimony of William M. Ebner.)

A. Mining and prospecting.

Q. And you have given some of the locations you made of water rights and mining claims, and property that you have operated? A. Yes, sir.

Q. I will ask you if during that length of time, you became acquainted with prospectors and miners generally in and about Juneau and Silver Bow Basin? A. I have; I know a great many of them.

Q. I will ask you, Mr. Ebner, who, if anyone, was your attorney in the year 1891?

A. A. K. Delaney was the company's attorney when I arrived here.

Q. The company's attorney—what company do you mean?

A. The Eastern Alaska Mining and Milling Company; the company I represented here.

Q. That is the company that was operating the property which is now a part of the Perseverance Company's property? A. Yes, sir.

Q. I will ask you if, before you made any location notice of water when you came here in 1891, you advised with any one pertaining to the means and methods of location and taking up of water for beneficial purposes?

A. I advised with A. K. Delaney. I was a new-comer and tenderfoot, and unacquainted with the laws, and that was one of the first things I did, and I advised with Mr. Delaney and a great many others, but first with Mr. Delaney.

Q. He was the company's attorney?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. What advice, if any, did Judge Delaney give you in regard to making water locations and the taking up and appropriation of water for mining purposes?

(Not answered because of objection.) [1559—1409]

Q. Well, you have stated, I think, Mr. Ebner, that Judge Delaney was the company's attorney and you advised with him about making water location notices? A. I did.

Q. Now, I will ask you if in pursuance of that advice you made the water location notices which I have questioned you about, and all of the water location notices that you made in and about Juneau, Alaska, and Silver Bow Basin?

A. Pursuant to the advice that I received from A. K. Delaney, together with the conversations and talks that I had with other mining men in the District at that time.

Q. Well, now, taking that into consideration I will ask you whether or not at that time, when you came here, there were any miners' rules and regulations which had been passed in 1880 in force and effect pertaining to the location and acquisition of water for mining purposes? A. No, sir.

Q. I will ask you, Mr. Ebner, to state briefly how you made your water locations, with respect to posting and with respect to all matters of making and recording it.

A. I followed this practice: The first thing was to post a notice in a conspicuous place upon the stream

(Testimony of William M. Ebner.)

from which I expected to divert or take the water; then after that—some time after—a reasonable time after—just as the situation demanded—at times I would make out a survey and make out a declaration, stating about where and for what purposes I expected to use the water, and that I would have filed of record; then do work as soon as convenient. I always considered that the diversion of the water to the work was as important as any of it.

Q. Now, then, the first notice, I understand, as a rule, that you posted up, you would never have recorded?

A. No, sir; not the first notice. [1560—1410]

Q. But some time within a reasonable time thereafter you would make out a declaration notice after you found out where you were going to use the water, and within a reasonable time thereafter file such a declaration? A. Yes, sir.

Q. Now, Mr. Ebner, I will ask you if, at any time after you came here in 1891 up to the time you left, any rules or regulations that had been passed by that old miners' organization back in the 80's were followed or were in general practice in the location and acquisition of water?

A. Not to my knowledge; if they were followed it was an accident; I never heard of any one that attempted to follow them.

Q. Now, Mr. Ebner, you heard Mr. Bradley's testimony yesterday about some conversation or conversations that you had with him in San Francisco, I think in 1902 or '3? A. Yes.



(Testimony of William M. Ebner.)

Q. At the time that he had some deal on for the Ebner Gold Mining Company's property which you were interested in; I will ask you to state to the Court what, if any, conversation you had with Mr. Bradley concerning that matter.

A. Before I left here it was understood, I think through Mr. Behrends and Mr. McDonald—I had no talk with Mr. McDonald,—that Mr. Bradley would meet me in San Francisco, so when I arrived in San Francisco I 'phoned to Mr. Bradley and he came to the hotel and told me at that time that they would like to examine the Ebner mine with a view to purchase, and asked me if it would be agreeable for them to make an examination, and I said yes; and he asked me what the price was and I gave him a price, and he says, "I will wire McDonald at once to make the examination"; and he asked me where I would be about the first of March—it would take them about that length of time to make the examination and receive a report; and I told [1561—1411] him I would be back to San Francisco about the first of March; and that was all the conversation that was had in regard to the mine, in sum and substance; we had a very short conference—lasted not over ten minutes.

Q. I will ask you, did you and he ever have any talk there at that time pertaining to the matter of your going to put a stamp-mill or build a stamp-mill down where your air-compressor is, in that gulch, in Gold Creek? A. No, sir; none whatsoever.

Q. Did you have any plats of your property of

(Testimony of William M. Ebner.)

anything of that kind with you that you went over with Mr. Bradley?     A. No, sir.

Q. Now, about this proposition of that building down the gulch there below your mill, Mr Ebner, where your air-compressor is—did you give the date on your former examination when you erected that?

A. I started to wash off a place for the foundation in 1896, and finished and built the present building as it is now and installed the compressor in 1897.

Q. Was it ever your intention, or did you ever tell Mr. Bradley that you expected to build a hundred stamp-mill there, and mine and operate your property in that manner?

A. I never told Mr. Bradley that; no.

Q. Just state to the Court what was your purpose—what, if anything, that was used for, that building that was put up.

(Objection and question withdrawn.)

Q. What, if anything, was ever installed in that building, Mr. Ebner, in the way of machinery or air-compressor, or anything?

A. An air-compressor—first I purchased what we call a double air-compressor—a duplex; I first installed one-half—that is, one side, and a year or so later the other side, making the complete compressor; and then afterwards I installed [1562—1412] an electric light plant, and that was all that was ever installed there.

Q. When, if ever, did you abandon the idea of putting any stamps in that building?

A. I abandoned the idea of putting any stamps

(Testimony of William M. Ebner.)

in there or building a stamp-mill there the first year.

Q. That was what year?

A. That was about 1898.

Q. Now, you have heard considerable of Mr. Bradley's testimony about that being a practical—not only a practical place to build a mill to run and operate that property, but the only place to build a mill—I will ask you, Mr. Ebner, to state to the Court whether or not that is either a practical or feasible place to build and operate a permanent milling plant?

A. It is not a practical place, it is not a feasible place, and a very unsafe place.

Q. What do you mean by unsafe, Mr. Ebner?

A. I mean in excavating over there down the creek from the present building you would have to remove a great deal of debris and over-brush, and the portion which is excavated shows that there are a great many cross-fractures and great big blocks of rock that are liable to give way any place you remove the surface.

Q. Have you ever noticed any giving away?

A. Oh, yes; the building is pretty well filled up with rocks now, or was in 1910.

Q. Now, then, you have given one reason for that not being a practical or feasible place—are there any other reasons, Mr. Ebner, why a mining man would not build a permanent milling plant there?

A. It is inaccessible and hard to get to, and there is no room, and the creek is changing; the creek is

(Testimony of William M. Ebner.)

now under a portion of the building that is there. The future mill would have [1563—1413] to be built still higher up, because at time of high water the water would come clear into the compressor-house, as it is now.

Q. I will ask you if the creek bed is wide there, or whether it is in kind of a gorge?

A. It is rather in a gorge, which is perhaps 50 or 60 feet wide, and the channel of the creek runs with the formation; first it will cut a channel on one side, and then on the other; it shifts about.

Q. Now, there is a flume line and a pipe-line on the right-hand side of the creek as you go up the creek that brings the water down to your air-compressor; I will ask you, Mr. Ebner, how the bank of the creek in and about your air-compressor, on the right-hand side of the creek as you go up, is—is it precipitous, rocky or level?

A. You mean above the present building?

Q. I mean just opposite the present building on the right-hand side of the creek.

A. It is all very steep; that pipe-line stands up on an angle of a little better than 45 degrees; it is very steep.

Q. What method have you been using to get down that hill?     A. Steps.

Q. How is the bank, or the formation, on the left-hand side of the creek right in the vicinity there of where this old air-compressor is?

A. It is about the same there; it is all steep.

Q. Now, about how far above the Basin road, as it

(Testimony of William M. Ebner.)

goes up the creek on the left-hand side of the creek, would you have to go down into that gorge to construct a mill, if you constructed it as Mr. Bradley contends for?

A. I don't know of any place where you could construct a mill with any safety; as you go down further it is liable to slide, and it is very steep and inaccessible, and if you go [1564—1414] in the vicinity there it is very dangerous.

Q. Do you know what the altitude is, Mr. Ebner, of the Basin road that runs up the creek on the left-hand side of the creek, approximately, above the level of your air-compressor plant, or the one that they call the new mill?

A. I think that is about 800 feet; it may be just a little bit short of that; it is 800 feet at the cabin; that is probably 775 to 800 feet right opposite the new building.

Q. What would be the practicability or feasibility of getting material and lumber down into such a gulch?

A. Well, to get the material down you would have to build chutes or trams to get it down; it is a mean place to get to; to land machinery would be more difficult than lumber.

Q. Heavy timbers? A. And heavy timbers.

Q. Well, what about getting out your concentrates?

A. Well, they would have to be elevated in some way.

Q. And have to be elevated before you could reach

(Testimony of William M. Ebner.)

the road with them approximately about how many feet?

A. It is about 180 feet, I think, to the road.

Q. With the Alaska-Juneau dam in the place it is in now, if it should remain there and their intake should remain where it *it*, what difficulty, if any, would you meet with in handling tailings from a mill constructed upon the Lotta lode claim?

A. Well, tailings would act, I suppose, just the same as the tailings did above; they would have to build a sand-box, and by doing that they would lose more or less of the water; and besides doing that, it would block up the flume.

Q. The Alaska-Juneau flume?      A. Yes, sir.

Q. That way of getting tailings out of there, would it be practical, or otherwise? [1565—1415]

A. Oh, I suppose they could build a flume, but it would be a long ways to build a flume; and it would take considerable water; it wouldn't take such a terrible lot of water until you get down to the flats.

Q. Would it be expensive or otherwise to flume your tailings?

A. It would be quite an expense to flume your tailings that distance.

Q. Do you know approximately, Mr. Ebner, how high above, or how a mill built there would be with respect to the level of the new Ebner tunnel that has been run through?

A. You mean what would be the elevation?

Q. Yes, sir; would the mill be below the level of the tunnel?



(Testimony of William M. Ebner.)

A. The compressor floor is about 200 feet above this new tunnel, and to build your stamp-mill with your crushing plant above, it would be 50 feet more—would be an elevation of your ores from that tunnel of at least 250 feet.

Q. Would that be an expensive or a cheap way of handling low-grade ore, such as is found in the Ebner Company's property?

A. It would be an extra expense.

Q. In the practical way of mining ores of the character of these, Mr. Ebner, just state to the Court some of the things that are to be taken into consideration in the mining and milling of ore of the character of this ore.

A. The principal thing to be taken into consideration would be the cost of mining and reducing the ores; and then you would have to cut off every bit of expense that is possible in the handling of the ores, in the transportation of the ores, in the reduction of the ores—there are a great many things that would enter into that.

Q. I will ask you, Mr. Ebner, in mining a property of this nature whether or not the ore should be delivered at the lowest point on the property, or should it be delivered in a mill which is on an elevation, and a gradual increase in height, [1566—1416] as this property is, commencing at Gold Creek and going up?

A. It should be delivered or gravitated to the top of the mill where you first want to feed it, or as near as you can get it there.

(Testimony of William M. Ebner.)

Q. Have you ever been in and about Shady Bend, Mr. Ebner, near the mouth or portal of the new tunnel that is driven there?

A. Yes, sir; I laid out the new tunnel designated about the spot where it is driven now.

Q. Now, I will ask you to state to the Court if that is or would be a practical and feasible place to build a mill for the mining of the Ebner Gold Mining Company's property?

A. It is a feasible place to build a certain size mill; I have taken measurements there and ascertained in a general way that about a 200-stamp mill can be placed there, of the old type, without any trouble.

Q. You have heard Mr. Bradley's testimony about slides and cracks in the earth there, and the danger of there being slides if the mill was built there—state what, if anything, you know about that, to the Court.

A. In 1901 there was a very large slide there that came down from the mountain side to the north of this and a little to the west—northwest, and came within probably 150 feet—the outer edge of that large slide came within 150 feet of what we call the Mackay grade, and that is all the slide that I have ever known of, rock slides there; I have been over the ground above the present mill site, not only once but several times, and I don't think there is any possibility of any slide there; there hasn't been any slide there for a great many centuries, because there are very large trees there.

Q. Trees approximately of what age, would you say, from an examination?

(Testimony of William M. Ebner.)

A. I would say that a great many of the largest trees have been cut down, but I would presume that some of the trees are [1567—1417] five or six hundred years old; in fact I know one of them was older than that.

Q. You made an examination of the timber to ascertain that? A. Yes, sir.

Q. There was something stated this morning, Mr. Ebner, I believe, as to whether or not your old mill building up there was ever increased in size—I will ask you whether or not that building was increased in size, or is it the same size it was when it was first built?

A. The building is the same size—it was in 1911, as it was when I first saw it. The building originally was built for 20 stamps—wide enough for 20 stamps, and when I purchased the property a 10-stamp mill was installed, and I installed 5 stamps more; the size of the building was the same in 1911; I haven't been here since, but the original building was there in 1911 as it was twenty years ago.

Q. It is the same size as when you first came up?

A. Yes, sir.

Judge WINN.—I think that is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, you don't think the site on the Lotta is a safe mill site?

A. No, I don't think it is, Mr. Hellenthal.

Q. And you don't think that the ground below the

(Testimony of William M. Ebner.)

Lotta, in the canyon from the Lotta down the creek, is safe until you get to Shady Bend, where the Mackay mill site is?

A. I don't know of any place where I would want to build a mill after you leave the building on the Lotta until you get around the point where you are sheltered.

Q. That is where the Mackay mill site is?

A. About there; yes. [1568—1418]

Q. Between those two points you think there is no safe place?

A. I don't know of any, Mr. Hellenthal.

Q. The place where the Mackay site is, you think that is all right?

A. That is not any too safe; when you go anywhere in the mountains you are not any too safe nowhere.

Q. The fact of the matter is, there is no place up there where you are any too safe?

A. There is a great difference in the locations; where the Mackay mill site is the mountain up that way is not so very high and it is not so very steep, and the formation runs in such a manner there that it reduces the danger; the danger there is much less than any other place I know of in the entire Basin.

Q. The only safe place to build a mill is on the beach, isn't it?

A. Either that or high up on the mountain side.

Q. You think that is the safest place there is up there? A. It is the safest place I know of.

Q. But that isn't any too safe?

(Testimony of William M. Ebner.)

A. As I said before, when you get into the mountains you don't know where a slide would come from, and I would rather be out of the mountains if you could get a mine anywhere you could get a good mill site.

Q. You have noticed the cracks above the mill site there, haven't you, Mr. Ebner—cracks in the rock formation?

A. Yes, sir;—you mean up above where the original slide came from?

Q. Yes, and a little above that—above the Mackay mill site.      A. Yes, sir.

Q. That formation is cracked up there,—you know that?

A. Yes; soon after the slide came down I took some powder up [1569—1419] there and attempted to crack some of the rocks.

Q. You know nothing about the slides that came down last winter?      A. No.

Q. You were not here?      A. No.

Q. You haven't been up there since?

A. Yes; I was up there, but I saw no signs of any slides. I have been up there several times.

Q. Now, Mr. Ebner, referring to the miners' rules in the year 1891, you say you posted a location notice for the Eastern Alaska Mining and Milling Company?      A. Yes, sir.

Q. And you posted that pursuant to advice that Judge Delaney gave you at that time?

A. Yes; and the information I had gathered in talking with a great many of the principal mining

(Testimony of William M. Ebner.)

men that were here at that time.

Q. Now, that location notice, you posted at the point where you intended to take the water out?

A. Yes, sir.

Q. And then you had it recorded with the Recorder?     A. Yes, sir.

Q. And started work on it immediately after posting the notice?

A. No; I didn't start work on that until next spring.

Q. Not until next spring?     A. No, sir.

Q. Mr. Ebner, I want to refresh your recollection about that, when you started work—there is an affidavit attached, following your water notice as recorded; it reads as follows:

(Objection to reading affidavit to witness sustained.)

Q. Just look at this affidavit to refresh your recollection as to the time you commenced work. [1570—1420]     A. Which part?

Q. When you commenced work—I think it is right in the beginning there, Mr. Ebner.

A. I don't see anything about commencing work here.

Q. That is what I am referring to, Mr. Ebner—(indicating)—“Notice posted on the 27th day of November, 1891, and work was commenced on the stream on the 27th day of November, 1891.”

A. We did a little work the day we posted there, or about that time, but what I have reference to is the real work, that is, the flume and the pipe-line—



(Testimony of William M. Ebner.)

that was done the following season.

Q. After having refreshed your recollection from this affidavit you know you commenced work the same day you posted the notice?

A. Yes, sir; we did a little work.

Q. Now, in that respect you followed the miners' rules as to what a notice would require, did you not, Mr. Ebner?

A. Paid no attention to the miners' rules at all.

Q. Paid no attention to them? A. No, sir.

Q. Do you know that notice provides as follows: "Know ye, that I, William M. Ebner, of Juneau City, District of Alaska, a citizen of the United States and over 21 years of age, do hereby declare and publish as a legal notice to all the world that I claim and have a valid right to the occupation, possession and enjoyment of all and singular that tract or parcel of land, lying and being on the east side of Silver Bow Basin, in Harris Mining District, District of Alaska, for the exclusive right of way for the purpose of constructing a flume or water ditch from the East Branch of Gold Creek to the Ten-stamp Mill owned by the Eastern Alaska Mining and Milling Company, and more particularly described as follows: [1571—1421] Commencing at a point about 2000 feet above said mill on said creek at the forks below the falls, and running in a westerly direction a distance of 2000 feet to said mill. I also claim and have a valid right to the enjoyment and use of 1500 miner's inches of water from said Gold Creek." Now, you know the rules provide, Mr. Ebner, that the notice must

(Testimony of William M. Ebner.)

state the number of miner's inches that you claim from the creek?

A. I don't know anything about the rules.

Q. If the rules so state, you followed the rules on that point?

A. If the rules so state, then I followed the rules.

Q. "Of Gold Creek for mining purposes." Now, that was to state the purpose for which you appropriated the water, wasn't it? A. Yes, sir.

Q. And the first statement of the number of inches was to state the quantity of water you appropriated in miner's inches? A. Yes, sir.

Q. "To be conveyed through such flume or water ditch to said mill"—that is to state the manner of getting the water to the place of use, and state where the water was to be used? A. Yes, sir.

Q. And if the rules say that was one of the things you must state, then you also complied with the rules in that regard? A. Yes, sir.

Q. "Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining"—that is all you stated in your notice?

A. I don't just remember what I did state; I expect that is probably all.

Q. "Witness my hand and seal this first day of December, 1891"—that is the notice you posted, as near as you can remember?

A. Yes, sir; that, Mr. Hellenthal, is a declaration. In the [1572—1422] first place we went up there and ascertained by measuring about the flow of

(Testimony of William M. Ebner.)

water, the amount of water that was flowing at an ordinary stage of the stream; then we posted a notice on the stream, and this that you are reading, Mr. Hellenthal, is the declaration—an independent paper, embodying portions or probably all of the notice posted on the stream, and that I placed on record; that designated just where the water was to be used.

Q. What you mean is that you call this a declaration instead of a notice?

A. Yes, sir; you might call it both; I always called it a declaration.

Q. You have heard it called both, haven't you?

A. Yes, sir; I have heard it called both.

Q. Now, the date of this notice is given here—"Witness my hand and seal the first day of December, 1891. Eastern Alaska Mining and Milling Company, by William M. Ebner, agent," that is the notice you referred to, isn't it?

A. Yes—does it give the date of posting?

Q. "Notice posted on the stream the 27th day of November, 1891." Recorded within ten days, wasn't it, Mr. Ebner—within ten days from the date of posting?

A. I didn't pay particular attention to that; I recorded that a day or so before I left for below.

Q. You recorded it within the time—within the ten days—you recorded it when the record shows?

A. I suppose so.

Q. If the notice is recorded within ten days, then

(Testimony of William M. Ebner.)

you followed the rules of recording within ten days, didn't you?

(Not answered because of objection.)

The COURT.—Was there a notice posted, or a declaration?

A. Yes, sir; the notice was posted on the stream, according to [1573—1423] that, on the 27th day of November; then a few days afterwards, after I had surveyed for the pipe-line and knew about the distance I made out a declaration and put that on record, but the original notice posted on the stream was never put on record.

Q. (By Mr. HELLENTHAL.) That first notice was a preliminary notice made up because you didn't know where you were going to use the water?

A. That first notice was the notice to the world that I claimed the water.

Q. It was a preliminary notice, wasn't it?

A. That was the actual notice, as I located it at that time.

Q. It was a preliminary notice, though, wasn't it?

A. If anything, the other was a preliminary notice.

Q. Which one?

A. The one that was placed on file, the declaration; I never intended, and it never occurred to me that the declaration had anything to do with the posting, because when I posted the notice that is when I made the claim.

Q. What did you put in that notice you posted?

A. I don't know exactly; we had a regular form declaring to the world that we claimed at this point

(Testimony of William M. Ebner.)

so many inches of water for mining and milling purposes, or something like that.

Q. Say where you were going to use it, the same as in this declaration?

A. No, we didn't state—no, I don't think so—I don't know about that; sometimes I would state—most of the time I would state in the notice about where I was going to use the water. I don't know whether I always followed that or not; I think I did; wherever I knew about where I was to use the water I would follow that—I would put that in the original posting; if I didn't know, I would not. [1574—1424]

Q. If you didn't know you could not put it in, could you?

A. No; I couldn't be anyways definite about it.

Q. Your recollection is that with reference to this particular notice you do not know just what it did contain?

A. I think, if my recollection serves me right, that I posted the notice up so many inches of water to be used for mining purposes by the Eastern Alaska Mining and Milling Company, or probably I used property.

Q. Was this declaration posted at some time?

A. No; that was never posted.

Q. But, however, it substantially contains what you had in your notice only a little more in details?

A. Yes, sir.

Q. Had some details that you didn't have when you posted your notice? A. Yes, sir.

Q. And then you recorded your declaration?

(Testimony of William M. Ebner.)

A. Yes, sir.

Q. Now, when did you make the next location of water, Mr. Ebner?

A. I don't remember just when I made the next one, Mr. Hellenthal; I don't know whether it is the Ground Hog gulch or the location on Gold Creek.

Q. Do you remember making one on June 17, 1893?     A. At what place?

Q. Juneau Mining and Manufacturing Company.

A. Yes; that is the Ground Hog gulch.

Q. In that notice you set up again the number of miner's inches that you claim, don't you, Mr. Ebner?

A. I think I did.

Q. You set up the place where you intended to take the water to, didn't you?

A. I think so. [1575—1425]

Q. And you filed the notice at the point of intended diversion, didn't you?     A. Yes.

Q. And stated in the notice the use to which the water was to be put?     A. I expect I did. .

Q. And gave a description by actual survey notes as to the route to be taken from the point of intended diversion to the place of intended use?

A. I think so.

Q. That notice is dated June 17, 1893, and was recorded within two days after that, wasn't it, Mr. Ebner?     A. I don't remember.

Q. And on the same day notice was posted on the stream, June 17, 1893—that is right, isn't it? .

A. I don't remember the dates.

Q. I will show it to you, Mr. Ebner.     Calling your



(Testimony of William M. Ebner.)

attention now to the notice that I have called your attention to, as it appears in the records, look over it and see if that isn't the correct date?

A. I expect that is the right date.

Q. The next page you will see the date of posting and recording.

A. Notice posted June 17,—yes, that is within two days.

Q. When was it recorded? A. June 19th.

Q. Two days after it was posted? A. Yes, sir.

Q. When was the next water location you made, Mr. Ebner?

A. I think the next was on Gold Creek.

Q. Where is that?

A. Just below the first bridge crossing the creek.

Q. Did you also post a notice at the point of intended diversion in that instance? [1576—1426]

A. Yes, sir.

Q. And you also stated what use you were going to put the water to? A. I think I did.

Q. And also stated the place where you were going to use it? A. About.

Q. (By Judge WINN.) To be used on the Boston group of lode claims? A. Not that one.

Q. (By Mr. HELLENTHAL.) You also recorded it? A. I recorded it.

Q. When was the next location you made, Mr. Ebner? A. One made on Gold Creek in 1893.

Q. Now, you also made a location on the Boston Group, didn't you, Mr. Ebner, under date of May 25,

(Testimony of William M. Ebner.)

1899, William M. Ebner—that was your location, wasn't it?

A. Yes, sir; I located several streams on the south and southwest side of Juneau mountain.

Q. In that location you also state the number of inches you were going to appropriate, didn't you?

A. Yes, sir.

Q. In this notice, Mr. Ebner, you also state the use to which you are going to put the water?

A. I think so.

Q. The notice also states that you took all the water of the gulches?

A. Yes, sir; there are several gulches, and I think I located three or four gulches, and I located all the water in those gulches, I think; it is a hard proposition to measure in miner's inches until you get it in a flume.

Q. And that is the reason you just simply made the statement in the notice that you took all the water in the gulch?      A. Yes, sir.

Q. And you stated the use for which you wanted that water—for [1577—1427] mining purposes?

A. I think so.

Q. And the point where it was to be used?

A. Yes, sir.

Q. And that notice was dated on the 25th day of May, 1899, and recorded on June 1st, 1899, wasn't it, Mr. Ebner?

A. I think so; I don't remember the exact dates; I know the notice was posted, and then this right opposite is also a declaration, Mr. Hellenthal?

(Testimony of William M. Ebner.)

Q. Was that also recorded?

A. Yes; the posting, I think, was some considerable time before that.

Q. That is all the water locations you made, Mr. Ebner, that you know of?

A. All that I made in the Harris Mining District.

Q. Now, you have never heard of anybody claiming a water right without recording the notice within ten days, have you, Mr. Ebner?

A. Claiming a water right without recording it in ten days?

Q. The notice of location within ten days.

A. I don't know that that question has ever come up—I don't know about that.

Q. You don't know anything about it?

A. I don't think that question has ever come up.

Q. You don't know of any one that ever claimed a water right that was not recorded in ten days—that the notice of location was not recorded within ten days, of your own knowledge, do you, Mr. Ebner?

A. I couldn't answer that; I know that I have claimed them when they were not recorded within ten days.

Q. Where?

A. This Boston Group, I never paid any particular attention to the ten days; I have talked to a great many people, and they [1578—1428] said they usually recorded within thirty or sixty days—that was the usual custom.

Q. Who told you that was the custom, Mr. Ebner?

A. Mr. Mein, and Archie Gamble.

(Testimony of William M. Ebner.)

Q. Those are men who are not here?

A. George Harkrader was one of the early comers here, and Henry Cooms, and lots of them.

Q. You heard George Harkrader's testimony, didn't you, that it was always the custom to record in ten days here?

A. No; I didn't hear that; I had a talk with George Harkrader the first year I was here.

Q. The first year you were here you remember having a talk about that particular point—on the point of recording?     A. About the old miners' rules.

Q. About how soon you had to record a notice?

A. Not how soon you had to record a notice, but in regard to the rules.

Q. You wouldn't say you had a talk with Harkrader in which he told you that you didn't have to record in ten days, would you?

A. Perhaps not in that language, but Mr. Harkrader told me the old rules were obsolete, and not in use at all; that was one of the miners here I had a talk with.

Q. All the time you were here, Mr. Ebner, the records were kept by the United States Commissioners?

A. Yes, sir.

Q. And all the water location notices were recorded, weren't they?

A. Yes; as a rule they did; I always recorded mine—not all of them but the most of them.

Q. And recorded them with the commissioner of the Harris Mining District—you know where the Harris Mining District is? [1579—1429]

(Testimony of William M. Ebner.)

A. About; I never knew just where it was, or where its boundaries end.

Q. You knew this territory was in the Harris Mining District?

A. I knew the Silver Bow Basin was in the old Harris Mining District, as it existed as long as the miner's organization was kept up; after that I didn't know; I never did know where the extension of the boundaries was.

Q. You, however, whenever you located a water right or mining claim in this locality, you designated it as being within the Harris Mining District?

A. I think we did for quite a while; I think that was sort of an acquired custom; we named it the Harris Mining District, and afterwards we had the Juneau Recording District, I think.

Q. And these water right notices and mining notices up in the Basin which you located, you designated the name as the Harris Mining District, didn't you? A. I think I did.

Q. And you know that the records for that Harris Mining District were kept by the United States Commissioner—that is where the recording was done?

A. Yes; I knew the United States Commissioner was the place to have them placed on record.

Q. You knew that everybody recorded their water notices and mining notices as well there, didn't you?

A. Yes, sir.

Q. That was the custom?

A. That was the custom, to put them on record.

Q. You heard miners say that water locations

(Testimony of William M. Ebner.)

didn't have to be recorded until thirty days after posting?

A. That was the general opinion with a great many that I talked with; Captain Mein, Superintendent of the Treadwell Mines, particularly told me that thirty, sixty, or even ninety days was sufficient time, or any time after you commenced work. [1580—1430]

Q. It would be sufficient if you recorded your notice within thirty or sixty days, or even if you recorded within ninety days?

A. The general opinion among mining men here was if you recorded them the same as a mining claim that was sufficient and covered all purposes and covered the law.

Q. That is, ninety days?

A. In the early days I don't think it was 90 days.

Q. It was 30 days at that time?

A. I think it was 30 days at that time.

Q. And so the general custom as you found it was that water location notices had to be recorded within thirty days and even as late as sixty days?

A. If they were recorded any time within thirty days it fully covered the law, and it didn't make but very little difference if you recorded them at any time.

Q. You were a witness in the case of Thorndyke against the Alaska Perseverance Company, Mr. Ebner, weren't you? A. I think so.

Q. You testified there for the Perseverance Company in connection with these rules, didn't you?



(Testimony of William M. Ebner.)

A. I don't remember just what my testimony was now, whether it was on these rules or what it was.

Q. You know Judge Winn called you as a witness for the Perseverance Company, don't you?

A. I know I was a witness; yes, sir.

Q. Do you remember your testifying as follows:

"Q. From the time you came here until 1900 did you appropriate any water for mining purposes? A.

Yes, sir. Q. Did you take it by notice and recording of the notice with the recorder? A. Yes, sir. Q.

Was that the recognized and universal way up until 1900 of getting title to placer rights and water rights?

A. It was; yes, sir." Did you so testify to that?

[1581—1431] A. I think I did.

Q. Did you not further testify at the same time:

"Q. Do you, during that time, know of anyone holding or attempting to hold and develop a mining claim if they did not record it? A. If they did not record

it? Q. Yes. A. No, I don't think I do. Q. Do you know of anyone appropriating or attempting to hold water that they did not record? A. No, I don't of any water"—did you so testify;

A. I expect I did, Mr. Hellenthal.

Q. And you don't now know of any particular person that ever attempted to hold water without posting a notice and recording it, as provided by the miners' rules, do you, Mr. Ebner?

A. I wouldn't say that; I don't recall of anyone who attempted to hold without recording, but as to following the miners' rules, I wouldn't say.

Q. Do you know of anyone who attempted to hold a

(Testimony of William M. Ebner.)

water right without recording it within ten days?

A. I haven't anyone in mind just at the present time.

Q. Do you know of anyone that attempted to hold a water right without stating in the notice that was posted the various things that you stated in your notices?

A. I have seen some postings on water rights that were very vague and indefinite, and contained very little—simply claiming the water.

Q. Do you know of any particular person, Mr. Ebner, that ever attempted to hold a water right in the Harris Mining District that didn't post a notice that contained the things required by the miners' rules, or the things that were contained in your notices—that is to say, the number of inches, the place it is to be taken to and the use to which it is put—do you know of any particular person, in all your experience, who didn't comply with that rule? [1582—1432]

A. In a general way I suppose they did; I have seen, but I cannot recall to my mind now, notices that were very indefinite—didn't state where the water was to be used only in a general way.

Q. Miners were not always as definite as you are, for instance, or as men of your business ability would be. Your statement was, in a general way, that you didn't know of anyone that didn't state the use in the notice in a general way?

A. I cannot recall anyone now.

Q. And that custom of posting a notice containing those things, and recording the notice, was always fol-

(Testimony of William M. Ebner.)

lowed, Mr. Ebner? A. To a more or less extent.

Q. You know of many that followed it, and don't know of any that didn't follow it—is that true?

A. I don't know of anyone who claimed water and actually put it to use but what at some time or another have posted a notice or made some sort of a declaration of location of the water—I don't know of anyone—cannot recall anyone just now.

Q. And recorded the notice?

A. I expect recorded the notice.

Q. I want to ask you about a conversation you had with Mr. Bradley in San Francisco.

(Whereupon a recess was taken for ten minutes.)

Q. Mr. Ebner, you wouldn't positively testify that you were not acting as President for the Ebner Company and that Mr. Behrends didn't send to Mr. McDonald for the purpose of transmitting it to Mr. Bradley of the Alaska-Juneau Company, a written declaration reading as follows: "The head or pressure from tank to new mill is 246 feet; at the old mill 117 feet. At present, the water is divided, being used at the old mill for operating the stamps and at the new mill for operating the compressor. As soon as the new mill is completed all water will be diverted and used under the high head. The [1583—1433] maps in the office of this company show the flumes, dams, water-lines; also the difference in elevation," and also containing in that statement the following: "Tests made at different times for the last five years from different portions of the property have convinced this Company that they have a very large mine

(Testimony of William M. Ebner.)

of medium-grade ore; and that in order to make it profitable it will require a large mill, and this Company has concluded to do the following: That unless negotiations are closed within the time stated, this Company proposes to not only immediately install the machinery in the new mill building, but to immediately commence work and extend the mill site for the installation of 60 stamps more, making a hundred stamp-mill instead of forty. This will require special arrangements and is one of the reasons why we offer the property for sale, and the principal reason why negotiations must be closed within the time stated." You would not testify, Mr. Ebner, that you or Mr. Behrends, acting for the Ebner Gold Mining Company, did not send to Mr. McDonald, for the purpose of transmitting the same to Mr. Bradley, a written statement containing the matters I have read, in the year 1903, would you?

(Not answered because of objection.)

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. WINN.)

Q. Now, Mr. Ebner, Mr. Hellenthal asked you about a certain water location which was made by you on Gold Creek in May or June of 1893, and he didn't ask you anything about as to when the notice was posted or when it was recorded; that is the notice with reference to taking up a thousand miner's inches of the water of Gold Creek, to be conveyed to the [1584—1434] power-house about 300 feet southwesterly from the Basin Road, and which

(Testimony of William M. Ebner.)

was posted on May 23, 1893, and dated on May 29, 1893, and recorded on June 14, 1893—that is the notice that he referred to, is it?

A. Yes, sir; that is the notice.

Q. Now, then, there is another one about which he asked you and he left out some dates—the one taking up all the water from the Southwest gulch and Southwest gulch No. 1 and South gulch and South gulch No. 1, situated on the south and southwest slopes of Juneau Mountain, place of use to be the Boston group of lode claims; posted April 25, 1899, dated May 25, 1899, recorder June 1, 1899—that is the notice to which he had reference, is it, and to which you had reference? A. Yes, sir.

Judge WINN.—That is all.

Mr. HELLENTHAL.—Mr. Ebner, that first notice that Judge Winn asked you about, a thousand inches from Gold Creek, you never did anything on that did you?

A. No; I never did anything on that; I never appropriated that water.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1585—1435]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal H. T. TRIPP, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:



**Testimony of H. T. Tripp, for Defendant (Recalled  
in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Tripp, you have been on the witness-stand before and have been sworn. I think you said you had been following the mining business for some time in and about Juneau, Alaska, and just to get the dates I will ask you when did you first commence any mining operations in Alaska?

A. I first came here in 1896 to examine the Funter Bay mines for a company in San Francisco. I closed up affairs there very shortly and came over to Juneau, went out in the Basin, looked around the country here, went to Sundum and went back to California. The next year I came back here and had charge of the Sundum Chief mine, and afterwards the Consolidated Sundum mines, which was the Sundum Chief and the Bald Eagle, until 1904, when I came to Juneau and have been here ever since.

Q. And you have lived in and about Juneau and have in some way been connected with the mining business ever since that time, have you?

A. Yes, sir; I have.

Q. And have met a good many mining people, and some prospectors, and so forth, in and about Juneau, have you not?

A. I have been associated with that class of people all the time.

Q. I will ask you, Mr. Tripp, whether or not you ever heard anything about the people in and about



(Testimony of H. T. Tripp.)

Juneau ever taking [1586—1436] up water rights and taking up water to be used for mining purposes, following any rules or regulations that were passed by a so-called miners' organization away back in the 80's.

A. I don't know anything about it.

Q. Never heard anything about it?

A. I heard more about that in the courtroom here during the case last year than I ever heard before; I have heard the mining district mentioned, but I don't know anything about any rules or customs, or where the Harris Mining District is, or how much territory it contains; I don't know if there is any Harris Mining District now; never heard of a miners' meeting being held here during my time, and I don't know anything about it.

Q. And you have mingled with mining people ever since you have been in Alaska, have you, Mr. Tripp?

A. Yes, sir.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You don't know, Mr. *Hellenthal*, whether the miners generally observed the rules of the miners in this District or not?

A. No, sir; I don't know what the rules are.

Q. Don't know what the miners did in regard to observing the rules in regard to the appropriation of water?

A. No; in relation to any miners' rules, I don't know anything about it.

(Testimony of H. T. Tripp.)

Q. Don't know anything about it?     A. No.

Q. Whether they observed them or not?

A. I don't. [1587—1437]

Q. The mines you had charge of in Sundum are not in the Harris Mining District, are they?

A. I don't know where the district is.

Q. Anyhow, all of those mines are at Sundum?

A. Yes; about fifty odd miles below here.

Mr. HELLENTHAL.—That is all.

Judge WINN.—You have talked with miners in and about Juneau, and discussed the mining proposition, and heard them talk?

A. I have talked with miners, mining men, lawyers, engineers, and everybody else.

Q. In and around Juneau, as well as around Sundum?     A. Yes, sir.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1588—1438]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal JOHN PERELLE, who, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John Perelle, for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Your name is John Perelle?     A. Yes, sir.

Q. About how old are you, John?

A. About forty-six.

(Testimony of John Perelle.)

Q. How long have you lived in and about Juneau, John? A. About 23 years.

Q. What have you been following most of the time since you have been here? A. Mining.

Q. Mining and prospecting? A. Yes.

Q. In and about Juneau?

A. Juneau and southwest Alaska—to the westward.

Q. In and about Juneau, too? A. Yes, sir.

Q. You are at present working out on Salmon Creek, near Juneau? A. Yes, sir.

Q. You have also worked on the Ebner property, haven't you? A. Yes, sir.

Q. I want to ask you, John, if you had anything to do with the installation of the new air-compressor up near Shady Bend, on the grade there that has been graded off for a mill site?

A. Yes, sir; I make the foundation for that compressor.

Q. Where was the foundation for that air-compressor erected with reference to the graded-off portion that Mr. Mackay had graded [1589—1439] for a mill site?

A. We find pretty good solid ground there.

Q. I know; but did you sink down?

A. Sink down to the grade that Mr. Mackay graded down to get lower to get our concrete under there?

Q. Sunk down about how far? A. Ten feet.

Q. And found what?

(Testimony of John Perelle.)

A. Pretty good solid ground; not bedrock, but good solid ground.

Q. You didn't go down as far as bedrock?

A. No.

Q. Then you used cement for the foundation?

A. Yes, sir.

Q. Did you get a good or bad foundation?

A. Got a good foundation; just as good as you could get.

Q. You say you have been mining in and around Juneau off and on for many years?

A. About twenty-three.

Q. Part of the time you were out to the Westward?

A. Yes, sir.

Q. I will ask you, John, if you met a lot of prospectors and mining people in and about Juneau while you were living here at Juneau?      A. Yes; I did.

Q. Talked over matters about location of mining claims, water rights, and so on?      A. Yes, sir.

Q. Did you ever hear, in talking with these various people, anything concerning any mining rules and regulations that the miners back in 1882 passed with reference to locating water claims—do you know anything about any such rules as that? [1590—1440]

A. I never knew about that; I knew you had to put in the location of water where you wanted to take it, and commence work if you want to use the water, and record it any time you are ready for it, but I never knew the time was fixed ten days or twenty days, or anything like that.

(Testimony of John Perelle.)

Q. Never heard anything about that portion of it?

A. I located some water myself, but I waited over a month before I recorded.

Q. And this question that you had to do it in ten days, you never heard anything of that kind stated?

A. No; not that you had to.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You knew, John, that they had rules on that subject?

A. I never heard anything about rules; all I know you had to record it.

Q. You knew you had to post a notice and record it? A. Sure.

Q. But you never heard anybody state, or never knew within what time it had to be recorded, whether within ten or twenty days? A. No.

Q. Never knew that? A. No.

Q. You knew you had to commence work right away, though?

A. Why, you had to do some work to hold the water.

Q. Also knew you had to post and record a notice?

A. The time you locate the water—suppose this year you put up your location notice, you wouldn't have to do any work until next year, and then next year you had to do the work. [1591—1441]

Q. You knew you had to post and record your notice, but didn't know just when it had to be recorded?

A. No.

(Testimony of John Perelle.)

Q. Didn't know when you had to record it?

A. No.

Q. Now, John, you put that compressor in, you say? A. Yes; I was foreman.

Q. You have always acted since you have been working here,—have always had charge of men for some of these companies? A. Yes, sir.

Q. You have worked for other people, having charge of men, in connection with these mines—sometimes with one mine and sometimes another?

A. Yes, sir.

Q. And you are at present working for Mr. Noble at Salmon Creek? A. Yes, sir.

Q. You have charge of Mr. Noble's work at Salmon Creek? A. Yes, sir.

Q. That is the same Noble that is connected with the Ebner Company?

A. I don't know anything about that.

Q. He is George Noble? A. Yes, sir.

Q. And you are working for him now?

A. Yes, sir.

Q. And that is the office you have held ever since you have been in the country, working for other people having charge of the men? A. Yes, sir.

Q. Sometimes in driving tunnels and sometimes in getting out ore? A. Yes, sir. [1592—1442]

Q. Now, you went down about 10 feet, you say, through sliding material, and then found solid ground? A. Solid packed ground; yes, sir.

Q. Above that it was loose ground and slide material?



(Testimony of John Perelle.)

A. No; there were no slides; slide hadn't been there for perhaps a hundred years for all I know.

Q. You had to go down through it before you got solid ground?

A. We had to go down 10 feet to get our concrete in; the foundation was graded out before; if it wasn't graded out we would not have to go that far; it was graded down that far and we had to go down to get our power for the water-wheel.

Q. If it had not been graded before you would had to have gone further to get to solid ground?

A. No, I would not, to get that water.

Q. But after you got water you would have solid dirt, not solid rock?

A. I didn't say solid rock, but solid packed ground—solid enough for any foundation.

Q. No, bedrock? A. No.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Judge WINN.)

Q. Now, let's see, John—besides working for other people, you have been prospecting for yourself and located some water rights?

A. Yes; have some claims yet.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Never located any water rights, did you?

A. Yes, sir. [1593—1443]

Q. In the Harris Mining District?

A. No; Berner's Bay.

Q. Never located anything around here near Ju-

(Testimony of John Perelle.)

neau, in this district?

A. Located water up to the Westward and Ketchikan, that is all.

Q. You located one water right in Berner's Bay?

A. Yes, sir.

Q. When was that?

A. About three years ago; I located one to the Westward.

Q. You have spent a good deal of time out to the Westward?

A. I have been there a couple of years; then I came back to Juneau, and went back there again.

Q. Put in more time in the Westward than in this territory in the last twenty years?

A. No, sir; I put in more time here than anywhere; I put in about three years to the Westward.

Q. Was that water right at Berner's Bay taken in your name?

A. No, sir; for the Lynn Canal Mining Company.

Q. Where did you record it, John?

A. Never recorded it at all.

Q. Do you claim the water yet, or did you let it go?

A. Let it go now, but at the time we put in the flume we run a mill and compressor and used the water.

Q. That was up in Berner's Bay country, and that is about 50 or 60 miles away from Juneau?

A. Something like that.

Q. That is the other side of the Auk Village, isn't it?     A. Yes, sir.

Q. That is the only water right you had anything

(Testimony of John Perelle.)

to do with? A. Around Juneau; yes, sir.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1594—1444]

The defendant, to further maintain the issues on its part, introduced as a witness in surrebuttal JOHN WAGNER, who, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John Wagner, for Defendant (in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Your name is John Wagner? A. Yes, sir.

Q. How long, Mr. Wagner, have you lived in and around Juneau?

A. Pretty near 20 years; it will be 20 years next March.

Q. What has been your business, principally, during that time? A. Mining and prospecting.

Q. You have located mines and located water?

A. Yes, sir.

Q. And worked for other people and worked for yourself, have you? A. Yes, sir.

Q. And in this time you have met a lot of prospectors and miners, and people who were engaged in locating water and mining claims in and around Juneau, have you? A. Yes, sir.

Q. I will ask you, Mr. Wagner, in these matters that you have been connected with and in the talks you have had with these people that you have met,

(Testimony of John Wagner.)

have you ever heard anything about certain miners' rules that were passed back in the 80's, in regard to the location and taking up and using of water?

A. No, sir; I did not.

Q. Never heard any discussion about any such rules? A. No, sir.

Q. And you have mingled around among prospectors and mining people quite a bit, haven't you, Mr. Wagner? [1595—1445] A. Yes; I have.

Judge WINN.—You may cross-examine.

Mr. HELLENTHAL.—No questions.

(WITNESS EXCUSED.) [1596—1446]

The defendant, to further maintain the issues on its part, introduced as a witness in surrebuttal ANGUS MACKAY, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Angus Mackay, for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Mackay, you have been on the witness-stand in this case before? A. Yes, sir.

Q. How long, Mr. Mackay, off and on have you been in Alaska and mingled around with the prospectors and miners in Alaska, in and about Juneau and Douglas? A. I came up here first in 1893.

Q. 1893, and then you went away after you had been here how long?

(Testimony of Angus Mackay.)

A. Oh, about 1902, I think, when I left here, and I was gone until 1910.

Q. Did you have anything to do, Mr. Mackay, with building any of the mills over at the Treadwell mines? A. Yes, sir.

Q. Now, I will ask you, Mr. Mackay, in building any one of those mills if you ever found that any part of any one of those mills was fully constructed on ground other than bedrock?

A. I constructed a part of the 240, and there is a part of that wasn't on bedrock.

Q. Part of it over which the stamps were installed?

A. Yes; part of it.

Q. And how was that constructed—was it constructed on a cement foundation, or piling, or what?

A. It was constructed on natural ground. [1597—1447]

Q. Now, Mr. Mackay, there has been considerable talk about this place up at Shady Bend being an impossible place to build or maintain a mill, and something said about slides—there is evidence of a slide there having taken place some years ago, somewhere up in that vicinity, isn't there?

A. Yes; a great many years ago.

Q. I will ask you about how far that slide was that took place then from the foundation which you graded off for the mill site up there?

A. It is several hundred feet, I don't know how many.

Q. I will ask you if you are acquainted with the hillside and the ground immediately above the grade

(Testimony of Angus Mackay.)

of the mill up there, and all around in that vicinity?

A. Pretty well acquainted; I have been over the ground considerable.

Q. You have had considerable to do with the construction of mills, haven't you, Mr. Mackay—that has been your business? A. Yes, sir.

Q. I will ask you, Mr. Mackay, if that place, so far as slides are concerned, is about as safe as any other place for the building and construction of a mill?

A. I would consider it safe enough in regard to slides; don't see why it should be any more dangerous than that Mount Juneau shall fall over on us here.

Q. How is the formation up above, on the hillside there—does it show there has been any recent slide there?

A. No, sir; there is timber right above that that must be seven hundred years old.

Q. I will ask you, Mr. Mackay, if you have associated with prospectors and miners in and about Juneau and Douglas ever since your coming to Juneau, and especially during those periods of time that you have been in and about Juneau and Douglas and Treadwell? [1598—1448] A. Yes; I have.

Q. I will ask you, Mr. Mackay, as to whether or not in your association with miners and prospectors, the matter of taking up mining claims and water rights had sometimes been talked about? A. Yes.

Q. From these conversations, Mr. Mackay, did you ever hear any contention made by these parties that you have talked to, about there being in force certain



(Testimony of Angus Mackay.)

mining rules and regulations passed in 1880 concerning the taking up and appropriation of water?

A. Never heard of it until this case—that is, in this district.

Q. Never heard anything about any miners' rules and regulations until this case came on?

A. Of course, I am perfectly well aware there are rules and regulations in all new mining camps before the court comes in.

Q. You know, from your experience, that that has been the case before the coming of the courts, that sometimes miners get together and organize mining rules? A. Yes, sir.

Q. You never heard, though, anything about any miners' rules or regulations passed in 1880 being still in force here?

A. Oh, no, nor no other camp after the courts took hold.

Q. Now, there has been some testimony here, Mr. Mackay, I think by Mr. Bradley or someone, about there being large cracks or crevices, or something of that kind, on the hillside just up above your present mill site—I will ask you if there is anything of that kind there? A. Haven't seen any.

Q. You have been over and about that ground quite a bit, and if there were any there you would be liable to see them, wouldn't you? [1599—1449]

A. Yes; I have been clear up the canyon.

Q. You have been up on the penstock?

A. Yes, sir.

Q. Up on the flume line? A. Yes.

(Testimony of Angus Mackay.)

thal has offered, to have the pleadings go into evidence. Furthermore, I expect to follow it up by offering the remaining portion of the findings of fact in the case so as to have before the Court all of the findings that the Court made in that case; and then I expect to offer in evidence the opinion, which is on record here, of the Court in passing upon the issues, and then offer the decree, and then your Honor will have before you just exactly what was litigated in that case. I now offer the complaint in that case, the amended and supplemental answer and the reply; also the remaining findings of fact and conclusions of law made by the Court in that case, as well as the written opinion which is on file here.

(Whereupon said papers were received in evidence and marked [1602—1452] as follows: Complaint, Defendant's Exhibit "L-2"; ~~Answer, Defendant's Exhibit "L-2";~~ Supplemental Answer, Defendant's Exhibit "M-2"; Reply, Defendant's Exhibit "N-2"; Findings of Fact, Defendant's Exhibit "O-2"; Opinion and Decree, Defendant's Exhibit "P-2.")

(Whereupon court adjourned until 10 o'clock tomorrow morning.) [1603—1453]

#### MORNING SESSION.

August 13, 1914, 10 A. M.

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal ANGUS MACKAY, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Angus Mackay, for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Mackay, did you, on or about the 6th of October, or any other time, ever send young Russell Casey from the mill grade at Cape Horn up to the Ebner dam to carry some lumber over and put a box in near the intake of the new flume line of the Ebner Company?

A. No; young Casey worked for me on the mill grade, but he wasn't sent up there.

Q. There is one question, Mr. Mackay—I think that Mr. Bradley or Mr. Kinzie testified that there had been a slide come down from the hill right close to your mill grade—since you commenced grading off that mill site has there ever been any such slide there? A. No slide since the grade was made.

Q. Do you remember, Mr. Mackay, what day Russell Casey left service down at the mill site?

A. 6th of October.

Judge WINN.—That is all.

Mr. HELLENTHAL.—No questions.

(WITNESS EXCUSED.) [1604—1454]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal WILLIAM M. EBNER, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of William M. Ebner, for Defendant  
(Recalled in Surrebuttal).**

**Direct Examination.**

(By Judge WINN.)

Q. Mr. Ebner, there is one direct question that Mr. Hellenthal asked you on cross-examination which I did not ask you about—I think you said something about there being cracks in the earth or on the mountain-side somewhere along in the vicinity of Cape Horn or Shady Bend—where was it that you ever, at any place along there, saw any cracks in the mountain-side?

A. The cracks that I referred to in my testimony are those just above where the large slide came from in 1901.

Q. That is the slide that you testified concerning that didn't touch anywheres near the mill grade that Mackay has made at Shady Bend?      A. Yes, sir.

Judge WINN.—That is all.

**Cross-examination.**

(By Mr. HELLENTHAL.)

Q. You mean, Mr. Ebner, just a little further up the creek that the slide?

A. No; I mean just where the original slide or large slide broke off—just above that.

Q. Above that—you mean up the creek, don't you—not down the creek?

A. I mean the same place where the slide came from; the rock [1605—1455] that is left up there, there are some cracks there. Soon after the slide I

(Testimony of William M. Ebner.)

took some powder up there and attempted to blast down some of the rocks, and I quit because it took too much powder.

Mr. HELLENTHAL.—That is all.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1606—1456]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal JOHN CARLSON, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John Carlson, for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Carlson, you were on the witness-stand before and testified concerning the time that the first one or two boxes were put in at the Ebner dam?

A. Yes, sir.

Q. Now, you know Russell Casey, do you?

A. I know him by sight.

Q. I will ask you if Russell Casey had anything to do with carrying the lumber from any place, or assisted in carrying the lumber to put in the first box, or two boxes that were put in the excavation at the intake at the Ebner dam? A. No, sir; he did not.

Q. Was he up there on the day the box was put in?

A. No, sir; I didn't see him.

Q. You were around there on the 4th, when you testified you put it in, so if he was there you would

(Testimony of John Carlson.)

have seen him, wouldn't you?

A. If he had been there I would have seen him.

Q. Casey said he was up there on the 6th carrying some lumber to put in the box—was Casey up there on the 6th carrying any lumber?

A. I couldn't say—I didn't see him there.

Q. But he was not there at the time that first box you testified about was put in?

A. No, sir; he was not.

Judge WINN.—That is all. [1607—1457]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Who was there?

A. There was myself, Riordan, Jack Loff, Gallygher, Jerry, and a couple more fellows there—I don't know their names now.

Q. Who carried the lumber?

A. We all carried some.

Q. It didn't take the whole crew to carry that lumber, did it?

A. No; I cut it up and took some up with me from the mill up to the dam.

Q. That was the lumber for the headgate?

A. That was for the headgate; yes.

Q. You don't know who carried that lumber for the boxes?

A. Yes; I just named the parties that carried it.

Q. All those fellows you have named carried that lumber? A. Yes.

Q. Now, on the 6th who was there?



(Testimony of John Carlson.)

A. There was quite a bunch of fellows there then.

Q. Who were they?

A. I don't know their names.

Q. How many men were there on the 6th?

A. Probably a dozen, maybe more.

Q. Do you know any of them? A. Yes; I do.

Q. Do you know any of them now who were there?

A. No.

Q. You don't know whether Casey was there or not, do you? A. I didn't see him there.

Q. Not that you now recall.

A. Well, if he had been there I would recall it.

Q. You would know now, four years after this thing happened, whether Casey had been there?

A. I would; yes, sir. [1608—1458]

Q. Now, tell me who else was there, A. Myself.

Q. Tell me one man besides yourself?

A. Riordan, Jack Loff, Jerry, Galligher—that is the only names I can remember.

Q. That same old crew? A. Yes, sir.

Q. That same old crew—you remember them?

A. Yes, sir; I know they were there.

Q. Who else besides that crew?

A. I don't know—I don't remember their names.

Q. You don't know of another single man besides your crew who was there? A. Not by name; no.

Q. Did you know them? A. By sight; yes.

Q. Tell me how any one of them looked.

A. There was short men, slim men, fat men—all sorts of men.

Q. Every kind and description of men?

(Testimony of John Carlson.)

A. Yes, sir.

Q. You don't know the names of any of them?

A. I just mentioned a few of their names.

Q. Outside of that crew of your own, do you know the names of the others?

A. I don't know the others by name.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1609—1459]

The defendant, to further maintain the issues on its part, introduced as a witness in surrebuttal JERRY ENICH, who, having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Jerry Enich, for Defendant (In Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Your name is Jerry what?      A. Jerry Enich.

Q. Jerry, were you working for Mr. Mackay in October, 1910?      A. Yes, sir.

Q. Do you know anything about putting the first box in at the intake of the new Ebner flume—were you there at that time?

A. Yes, sir; I was carrying lumber.

Q. You were carrying lumber?      A. Yes, sir.

Q. Do you know a young fellow named Russell Casey?      A. Yes.

Q. I will ask you if Russell Casey helped to carry any lumber or was up in or around the place where that box was put in, when the first box was put in?

(Testimony of Jerry Enich.)

A. No, sir.

Q. He was not there? A. No, sir.

Q. Who were the parties, as well as you remember, that carried the lumber over to put that first box in?

A. Why, me and Chris Woods, John Carlson, and some more I don't know now.

Judge WINN.—That is all—you may cross-examine. [1610—1460]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. What day was that, Jerry? A. Fourth.

Q. Fourth of what month? A. October.

Q. How do you fix that date?

A. I know it was pay day next day, on the 5th.

Q. You remember now it was that particular day?

A. Yes, sir.

Q. Was Harri up there—did you see Harri's tent there at that time? A. No.

Q. You didn't see Harri's tent? A. No.

Q. And you didn't see Russell Casey?

A. No, sir.

Mr. HELLENTHAL.—That is all.

The WITNESS.—I know him; for five or six years he was working for me—Casey, he was working for Perseverance Mining Company, and if I saw him I know him.

Mr. HELLENTHAL.—I move to strike out that testimony.

The COURT.—It may be stricken out as not responsive.

(Testimony of Jerry Enich.)

Redirect Examination.

(By Judge WINN.)

Q. Do you know the lame man, O. M. Harri, that had a tent up there?     A. Yes; I know him.

Q. When did you first see that tent there?

A. Oh, well, I don't know.

Q. You saw it up there, did you? [1611—1461]

A. Yes; I saw him there in the tent; he worked around the tent.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1612—1462]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal DAN RIORDAN, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Dan Riordan, for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Dan, you know a young fellow named Russell Casey, don't you?     A. Yes, sir.

Q. You have known him for several years past?

A. No; I have only known him since the last three or four years.

Q. In 1910 did you know him?

A. Not at that time I didn't know him.

Q. You know him now, though?     A. Yes, sir.

Q. And about how long have you known him?

(Testimony of Dan Riordan.)

A. Pretty close on to four years.

Q. You were up there, Dan, when that first box was put in, or the little piece of flume, at the intake of the new Ebner flume, weren't you—you testified to that before?

A. I got instructions from town on the morning of October 4th to put in that box.

Q. Was Russell Casey up there carrying any lumber to put that box in? A. No, sir.

Q. Who do you remember—give the names of some of the parties that helped you to put the lumber over there.

A. I cannot give the names of three men, three Austrians—John Carlson, Galligher and myself and these three Austrians.

Q. Was Jerry up there?

A. Yes, sir; and there was another man—I know him by sight on the street, but I don't know his name.  
[1613—1463]

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Do you testify that Russell Casey wasn't, on the 6th day of October, carrying lumber?

A. I never said anything of the kind—I said the 4th.

Q. You don't say he was not there on the 6th carrying lumber? A. I don't know—I wasn't there.

Q. The 4th day was the day you put in the headgate and put the box in?

A. Yes; that is the day we put the box in.

(Testimony of Dan Riordan.)

Q. You were carrying lumber up from the mill?

A. 4x6x14 on October 4th between two and three o'clock in the afternoon.

Q. Was Harri's tent there at that time?

A. Yes; about 200 feet from the intake; he come up to me and asked me if I was the foreman, and I told him no, and he wanted to know where the foreman was at, and I said at the mill, and he said, "If you come up any further you are trespassing"—

Q. You don't testify that Russell Casey was not there on the 6th of October, 1910?

A. I don't know.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1614—1464]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal GEORGE JACKALEVE, who, having been previously sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of George Jackaleve, for Defendant  
(Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Jackaleve, you have been on the witness-stand before and testified concerning putting in a box or piece of flume at the Ebner dam and at the intake of the new Ebner flume line—were you there when that first box was put in?

A. The first box, you mean?

Q. Yes; the first one put in by the Ebner Com-



(Testimony of George Jackaleve.)

pany right by the Ebner dam, put in by Carlson and those other people—were you there then?

A. I wasn't there at that time; I was there at five o'clock in the evening, but not before.

Q. But you got there at five o'clock in the evening, on the 4th? A. Yes; I worked night-time.

Q. Was there any piece of flume put in at the Ebner dam when you got up there, or were they working on it?

A. Yes; there was some there; I was watching night shift to keep anybody from breaking it.

Q. Were you there when the lumber was carried over to put it in? A. Yes, sir.

Q. You know young Russell Casey?

A. Yes, sir.

Q. Was Russell Casey carrying any of that lumber there? A. No, sir.

Judge WINN.—That's all. [1615—1465]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You were not there until the evening of October 4th? A. Yes, sir.

Q. Your name is Jackaleve? A. Yes, sir.

Q. George Jackaleve? A. Yes.

Q. And you were not there on the 6th?

A. I was there every day after that.

Q. You were night watchman, were you?

A. Yes, sir.

Q. And it was five o'clock before you got there?

A. Yes.

(Testimony of J. T. Martin.)

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1616—1466]

The defendant, to further maintain the issues on its part, introduced as a witness in surrebuttal J. T. MARTIN, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of J. T. Martin, for Defendant (in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Captain, how long have you lived in Juneau?

A. Since April, 1885.

Q. Captain, I will ask you if in the month of October, 1910, if you were up in and about the premises around where the Ebner Company's dam is built in Gold Creek? A. Yes, sir.

Q. Do you know where that dam is, Captain?

A. I do.

Q. And have known where it has been for several years past? A. Yes, sir.

Q. What did you do up there, Captain, in October?

A. I was Deputy United States Marshal.

Q. Do you remember what date, Captain, you went up there?

A. On the afternoon of the 5th, I believe.

Q. On the afternoon of the 5th of October, 1910?

A. 1910.

Q. What particular place were you in and about on the 5th?

(Testimony of J. T. Martin.)

A. Well, I was practically all around the dam and down where the Treadwell people were working, backwards and forwards; most of the time at the dam.

Q. Most of the time at the Ebner dam?

A. Yes, sir.

Q. What was your purpose for staying around there? [1617—1467]

A. The principal object I had was Mr. O. M. Harri was there in a tent, and I was told to keep pretty close watch on him, because they were afraid he was going to use his gun. (That part of the answer referring to the gun stricken.)

Q. Were you in and about Harri's tent and the Ebner dam on the 6th of October, Captain?

A. Yes, sir.

Q. You know young Russell Casey, don't you?

A. I do.

Q. Was young Russell Casey up and about those premises on the 6th? A. I didn't see him.

Q. If he had been there do you think you would have seen him?

A. I would very likely have seen him.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. There was quite a number of men there on the 6th? A. Yes, sir.

Q. And Russell Casey could have been there and you not have seen him?

A. Well, I was practically all about the works, backwards and forwards.

(Testimony of J. T. Martin.)

Q. But then you were not charging your memory with whom you saw, were you?

A. No, but I think I recognized the most of the men that were there, because I was talking with them at different times.

Q. How long during the day were you there?

A. All day and stayed the night of the 5th, and I was there [1618—1468] the day of the 6th.

Q. Did you see Mr. Kinzie up there that day?

A. I think I did; I am not positive now in regard to that, whether I seen him or not; if he went up there I must have seen him.

Q. Did you see Mr. Lindsay up there?

A. Yes, I think I saw him up there.

Q. Did you see Mr. Burch up there?

A. Yes, I saw him practically every day there; I wouldn't be positive it was that day.

Q. Harri didn't create any disturbance, did he?

A. He didn't do any violence.

Q. Caused no violence and used no firearms?

A. He had a gun in his tent, and I told him he must not use any gun, and he said he would not—gave me his word of honor that he would not.

Q. As far as you know he never intended to use any violence?

A. He attempted no violence while I was there.

Mr. HELLENTHAL.—That is all.

Q. (By Judge WINN.) He did have a gun in his tent, did he?

A. He had a gun in his tent, a Winchester rifle, I believe.

(Testimony of J. T. Martin.)

Q. (By Mr. HELLENTHAL.) Did you see the gun? A. I did.

Q. Are you sure of that?

A. He told me he had a gun and I saw it.

Q. Are you sure you saw a gun in Harri's place?

A. I am quite positive, and I told him he had better take the cartridges out and he said he would make no trouble with it.

Q. What kind of a rifle was it?

A. I think it was a Winchester rifle. [1619—1469]

Q. Your recollection now is that Harri had a gun in his tent? A. Yes, sir.

Q. And that you saw it? A. Yes, sir.

Q. Might it not be, Captain, that you were told about that and you are mistaken now as to seeing a gun?

A. No, sir; I think not; I am positive I saw the gun.

Q. You are positive you saw a gun there?

A. Yes.

Q. Captain, the time you saw Harri's rifle there was the first time he took his baggage up there, wasn't it?

A. Might be; I am not positive about that, but I know he had a gun in the tent; I talked to him and told him he had better take the cartridges out, and I told him I was the only man that was paid to carry a gun around.

Q. That is the day he took his baggage up there, isn't it? A. Maybe.

Q. (By Judge WINN.) His tent was already

(Testimony of J. T. Martin.)

erected and built when you were up there on the 5th?

A. Yes, sir.

Q. You didn't see any baggage up there, did you?

A. I did not.

Q. He was located in his tent, and his tent was already up when you were there on the 5th?

A. Yes, sir.

Judge WINN.—I wish to recall the Captain for a question or so.

The COURT.—In direct examination?

Judge WINN.—Yes, sir.

The COURT.—Very well.

(Questions by Judge WINN.)

Q. Did you say you were here in '85—did you ever attend any [1620—1470] miners' meeting here in 1885? A. No; I did not.

Q. You have *been and* about Juneau ever since that time? A. Practically all the time.

Q. You have seen mining men and talked to mining men and prospectors, and located some mining claims yourself, haven't you? A. I have.

Q. Have you ever heard any miners, since the '80s contending that there was any specific miners' rules and regulations in force and effect in regard to the location of water and the appropriation of water for mining purposes?

A. I paid so little attention to the water question myself—what prospecting I done was in claims more than in water rights, and there was some talk about there being rules and specifications about it, but I never paid but little attention to it.



(Testimony of J. T. Martin.)

Q. When did these conversations occur—you say there was some contention away back in the '80s or since that time?

A. It has been a long time ago; I couldn't say positively—when I first went to prospecting, about '88, along in there.

Q. And that was the last time, Captain, that you ever heard any talk about miners' rules about locating water? A. Yes, sir.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You know that the miners generally have always upheld those rules in locating water in the Harris Mining District, don't you?

A. As I said before, I have paid no attention to the water [1621—1471] rights.

Q. You don't know anything about water rights?

A. No, sir.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [1622—1472]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal D. D. MUIR, Jr., who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of D. D. Muir, Jr., for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Muir, you have been on the witness-stand and testified in this case before—were you in the

(Testimony of D. D. Muir, Jr.)

courtroom, Mr. Muir, at the time that Mr. Bradley was on the witness-stand testifying concerning a mill site on the Lotta lode claim?     A. Yes.

Q. Now, Mr. Muir, in your opinion as a mining man, and understanding the Ebner property as you do, I want to ask you whether or not the building and operation of a mill anywhere on the Lotta lode claim would be a practical and a feasible undertaking in the working of the Ebner property?

A. No; conditions as they exist to-day, I would say that a mill site on the Lotta for the working of the Ebner property from the lower cross-cut tunnel, would be a very poor practice.

Q. For what reasons, Mr. Muir?

A. For two reasons; in the first place, the hoisting of the ore some 250 feet from the present tunnel to the mill would be necessary, and would necessitate the installation of considerable machinery; and in the second place, the mill site at that point with the same quantity of water would only develop one-half the horse-power, or approximately one-half the horse-power, as a mill site under the present conditions [1623—1473] at the Mackay grade; and then the extra expense of hoisting, of course, would be considerable.

Q. Now, how is the channel in Gold Creek between where any mill could be erected on the Lotta lode claim and the dam of the Alaska-Juneau Company, I mean to whether it is steep or rocky or how?

A. The bed of Gold Creek between the Alaska-Juneau's intake and the Lotta is in a precipitous can-

(Testimony of D. D. Muir, Jr.)

yon; between the compressor building on the Lotta claim, which has been referred to as the mill site, and the intake of the Alaska-Juneau, that is a canyon in there, and the sides are very precipitous.

Q. Mr. Bradley testified something concerning that the tailings could be dumped into the creek if a mill were erected there—what, if any, effect, Mr. Muir, would the dumping of such tailings—we will say from a 100-stamp mill—in the creek from the Lotta lode claim have on the dam and intake of the Alaska-Juneau Company?

A. Well, the bottom of the creek is all rock there and the canyon is very narrow, and a mill built on the Lotta mill site would only be about 500 feet above the Alaska-Juneau intake, and there would not be much settling capacity in that space under those conditions.

Q. When you say the Lotta mill site you mean the patented Lotta lode claim?

A. In saying the Lotta mill site I mean the compressor house on the Lotta claim.

Q. The place that Mr. Bradley has stated would be a good mill site?      A. Yes.

Q. Now, what about the banks of Gold Creek at this place that has been referred to by Mr. Bradley as being a mill site— [1624—1474] are they rather precipitous, or how are they?

A. They are pretty steep on both sides.

Q. Do you know, Mr. Muir, approximately how far down in the gulch it would be—that is, in a vertical line—from the Basin road to where this air-com-

(Testimony of D. D. Muir, Jr.)

pressor or the mill site that they have referred to, would be—that is, what is the difference between the two?

A. Well, it would be close to, I would say, 150 feet.

Q. You know where the old Ebner flume is on the right-hand bank of the creek as you go up, that used to convey the water down to the penstock and the pipe-line to run this air-compressor, do you not?

A. I do.

Q. And you know the condition of the bank of the creek on that side right opposite, or alongside of this would-be mill site, do you?     A. Yes, sir.

Q. How do they get down from the Ebner penstock to the compressor?

A. There is the remains of an old set of steps there that I presume they used in getting down.

Q. Is that bank precipitous there and rocky?

A. It is very precipitous.

Q. Precipitous for about what distance of the bank, either on an incline or vertically, as you may state—approximately?

A. It is pretty precipitous clear to the top of the mountain; if you start from that old compressor building and go up at right angles, it is approximately right straight up to the top of the ridge.

Q. How would you have to take the concentrate out if the mill [1625—1475] were located there?

A. Oh, probably by hoisting them to the road.

Q. Is that a proper way of mining, where you have to hoist your concentrate that way?

A. Not when you have got a tunnel below.

(Testimony of D. D. Muir, Jr.)

Q. Now, Mr. Muir, there has been something said about some slide that took place on this Mackay mill site, or the grade of it, sometime in the last year—how long have you been acquainted with that grade in Shady Bend which has been referred to as the Mackay mill site or the Mackay grade?

A. I have been intimately acquainted with it for the last year.

Q. Has there ever been any slides there that came over a portion of that grade since you have known it?

A. No, sir; there has never been a slide that has touched the mill site in that time.

Q. There has been a photograph introduced of a slide that took place some years ago—have you ever noticed any indications of an old slide that took place seven or eight years ago? A. Very plainly.

Q. Where is that with reference to the grade of the Mackay mill site?

A. Oh, I should say that the eastern end of the slide, which would come the closest to the Mackay mill site, is some 200 feet from it.

Q. Have you a photograph here, Mr. Muir, that would show the Court very plainly the situation of that slide and the mill site premises in and about this grade that Mackay has made? A. I think so.

Judge WINN.—It is a very large exhibit and I do not wish to encumber the record with it, and if it is agreeable you [1626—1476] can cross-examine him on it.

Mr. HELLENTHAL.—I think this is a good picture to put in evidence, and I prefer it should be

(Testimony of D. D. Muir, Jr.)

offered in evidence if you want to use it at all.

Judge WINN.—I object to offering it in evidence—I don't think I will introduce it because Mr. Muir doesn't want to part with it.

Mr. HELLENTHAL.—Who took that picture, Mr. Muir?

A. Pond, took it on the 28th of November.

Judge WINN.—I will state to the Court it is immaterial to me whether the picture goes in one way or the other—do you want to part with the picture?

Mr. MUIR.—I have no objection.

Q. (By Judge WINN.) Now, then, you have a photograph in your hand which was taken—when did you say it was taken? A. November 28th, 1913.

Q. Does that show the Shady Bend point and the place approximately where the Mackay grade is, and the timber, and so forth, above the Mackay grade correctly? A. Yes, sir.

Q. I wish you would just point out on that to the Court some of the particular points as to where the grade is, and what the buildings thereon are, and any evidences of the old slide that you have testified that took place some years ago?

A. This picture was taken last year, shortly after the tunnel was put in, and it does not show the recent improvements.

Mr. HELLENTHAL.—The picture, I understand, is not in evidence.

Judge WINN.—I will offer it.

A. (Witness indicating on photograph.)—this is the slide in 1901, and shows the limits of it; this is



(Testimony of D. D. Muir, Jr.)

the point from which the slide came; this is the Mackay mill site grade over [1627—1477] here, and this shows the character of the timber; this is Shady Bend here, showing the character of the timber above the mill site, and the effect of the slide of 1901; this is the road and the tunnel, and this is the Basin road.

The COURT.—What are the objects between the pole in the center of the picture and the trees in the foreground of the picture to the right of this photograph?

A. The post is the mill grade, and the stable has since been put in there, and following the stable a storehouse and change-room; this is the compressor-house, and the fan-house, the entrance of the tunnel, the blacksmith-shop; over here is the new 5-stamp mill; situated between the compressor-house and the stamp-house is the assay-house and laboratory, this also shows on the Mackay mill grade the timber that was framed in Seattle to place on the mill grade preparatory to erecting a 200-stamp mill.

Q. Now, Mr. Muir, have you ever been above the Mackay mill site on the hillside there; and if so, I wish you would describe to the Court just the nature of the country?

A. I have been up there a great many times; there is timber there that has been standing a great many years—some that have been cut down and trees growing upon them.

Q. No sign of any slide there?

A. No sign of any recent slide; the topography of

(Testimony of D. D. Muir, Jr.)

the section there is more or less favorable to the point at which the Mackay mill site is located, for this reason: The gulch there, what is called in Shady Bend—should there be a slide come out in the direction of the gulch, it is so situated that it would throw that slide off.

Q. Down the creek or up the creek from the Mackay mill site? [1628—1478]

A. Throw it to the southwest, which would be down the creek from the Mackay mill site, as shown by that picture.

Q. There is one more question, Mr. Muir—Mr. Bradley testified something concerning that if you go back farther up the Ebner property and build a dam and take the water from there and convey it down to where the penstock is now, just above the air-compressor, which they have termed the mill—that if you could get considerable more head on the water by doing that. Now, if you go back up the creek to the full limit of the Ebner property, I will ask you if you have made any estimate approximately of what the head would be by the time you reached the present penstock where the water is conveyed down to the Ebner air-compressor in the gulch on what they term the mill site?

A. From the present Ebner dam we could extend a flume about 600 or 700 feet above there up the creek to a small gorge which is there, and still be on the Ebner property; in doing this, we could gain not to exceed 25 to 30 feet of head.

Q. How would that head compare with the head

(Testimony of D. D. Muir, Jr.)

that you have now at the end of your new flume line on the Cape Horn No. 2 claim?

A. The present head at the old compressor-house on the Lotta claim, I believe, is 235 feet, and with 25 feet added, we would gain by going up the creek, would give us a head of 260 feet, against the head at the Mackay mill site of 427 feet.

Q. The Mackay mill site, and what you refer to as the present head, is the head that you have right at your new flume line that you are getting water from to run your air-compressor at Shady Bend?

A. Yes; the Mackay mill site is the one located on the Cape Horn and is the one where we are operating our compressor. [1629—1479]

Q. You have 427 feet at the Mackay mill site?

A. Yes; that is the present head; of course, if we extended the flume up 700 feet from the Mackay mill site, that would be 25 feet added to that, and it would make 462 head against 427 feet head on the Lotta.

Q. Do you know, comparatively, how much water it would take to develop the same power at the Ebner air-compressor or the mill site, as they term it, that you now have with your penstock at Shady Bend or the Mackay mill site—approximately how much more water would it take at the first place to create the same power that you get at the Mackay mill site?

A. It would take approximately twice as much water at the old Lotta compressor to develop the same amount of power as it does at the present Ebner compressor on the Cape Horn No. 2 and the Mackay mill site.

(Testimony of D. D. Muir, Jr.)

Q. And that would be if you have your intake, taking the water down to the Lotta claim, at the furthest point up the creek on the Ebner property—if you move it up to the furthest point on the Ebner property? A. Approximately; yes.

Judge WINN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Muir, there would be more than 25 feet fall in Gold Creek in a distance of six hundred and some feet, wouldn't there?

A. Last fall, Mr. Hellenthal, we had in mind doing something of that kind to prevent the seepage that now occurs at the Ebner dam, and that was measured—if you remember there is a [1630—1480] flat in there.

Q. But you know there isn't any place on Gold Creek where the creek doesn't fall more than 25 feet in 600 feet—that is a pretty small fall, isn't it?

A. I think there are a great many places on Gold Creek that it doesn't fall more than that.

Q. You didn't take the actual elevation—that is an estimate? A. That is an estimate.

Q. You were talking about taking the concentrates out and hoisting them to the Basin road—you know that isn't the way you would take the concentrates out of there, don't you?

A. That is the answer I made to the question.

Q. Why, you would put a shaft down and take them out of the tunnel, wouldn't you? A. Yes, sir.

Q. Why, you would put a shaft down and take

(Testimony of D. D. Muir, Jr.)

them out of the bottom of your tunnel—you could easily put in a place to let those concentrates down, couldn't you?

A. Yes, at an extra expense, which is not practical.

Q. It would be more practical than to hoist it out through the shaft on to the Basin road and take them that way, wouldn't it?

A. It would be more practical not to build on the Lotta mill site at all.

Q. It is more practical to put a mill site on the beach, isn't it? A. Yes, sir.

Q. If you put your mill on the Lotta you would be put to very little additional expense in hoisting it, because you have to hoist it on the Mackay mill site, don't you? [1631—1481]

A. We would have to hoist it about 250 feet further on the Lotta.

Q. You would have to hoist it 50 feet on the Mackay and 250 feet on the other.

A. Yes, approximately.

Q. You would, however, save that haul from the Lotta down to the mouth of the tunnel, wouldn't you?

A. Yes; we would save the haul, but the saving on the haul would be a very small percentage of the cost from the hoisting end of it, because a train under motion, after passing the point where it was started—the cost of a train in motion on a down grade is practically nothing.

Q. Don't you know that it makes very little difference in the cost of hoisting, whether you hoist 50 feet or 250 feet—the difference in cost is exceedingly

(Testimony of D. D. Muir, Jr.)

trifling—don't you know that as a matter of fact?

A. No, sir; it would not be in this case.

Q. Do you know that in the Treadwell mine the cost of hoisting the ore 2,000 feet is very little more than the cost of hoisting it 150 feet?

A. Those would be remarkable costs, I should say.

Q. Don't you know that the Treadwell are hoisting the ore for less money at a depth of 2,000 feet than it was a few years ago?

A. Due to increase in the efficiency of their plant and the decrease in their working force.

Q. You know that is a fact, don't you?

A. I don't know it is a fact, but if it is a fact it is probably due to the causes I have assigned.

Q. You have to put your ores into the hoist anyway, and it is only the cost of the initial equipment that is more? [1632—1482]

A. Of your initial equipment?

A. Yes; you have to put in a shaft?

A. And you have to put in a hoist.

Q. You need a shaft to go 50 feet as well as you do to go a thousand feet, don't you?

A. No, sir; you would put it on the riffing plate direct from your crusher.

Q. But if you used a hoist?

A. We are not using a hoist.

Q. If you did use a hoist, it would be the same, wouldn't it? A. The same, in what way?

Q. The initial expense of the hoist is the hoist, isn't it, whether it is used to hoist 50 or 250 feet—the initial expense of the hoist is no greater, is it?



(Testimony of D. D. Muir, Jr.)

A. I would not figure on using a hoist down there.

Q. I am talking about if you did use a hoist, the initial expense would be the same, wouldn't it?

A. No; I would say if you were going to hoist 50 feet you would put in a smaller hoist than if you were going to hoist 250 feet.

Q. And would you say there would be any difference in the cost? A. I would say there would be.

Q. The difference in the hoist and the conveyor belt you would raise that ore with would be about the same, wouldn't it?

A. The cost of the conveyor belt would be about treble compared to the cost of the hoist.

Q. The up-keep, however, would be greater, wouldn't it? A. No; I don't think so.

Q. Now, Mr. Muir, what plants and mills have you ever built or constructed, and what properties have you ever opened up?

A. Well, sir, I have been on the construction end of the—

Q. I am not asking you where you have worked in the capacity of [1633—1483] an assistant, but what plants have ever been opened up and developed under your control?

A. About three properties around Nevada and different parts of the country.

Q. What properties are they?

A. The Combination Fraction in Goldfield.

Q. How big a property is that?

A. We had a 120-ton mill on it.

Q. A 120-ton mill? A. Cyanide plant.

(Testimony of D. D. Muir, Jr.)

Q. Cyanide plant?      A. Yes, stamp-mill.

Q. A stamp-mill and a cyanide mill together?

A. It is one unit.

Q. Treated about 120 tons of ore?      A. Yes, sir.

Q. What other plants have you opened up?

A. Well, now, what do you mean by opening up—do you mean from the inception of the property as a prospect to final producing stage?

Q. What plant has been placed in actual operation under your charge, when you had charge of the property?

A. Absolutely under my sole charge?

Q. Exactly.

A. I have stated the combination Fraction as one.

Q. Where is that, Mr. Muir?

A. I have just told you—Goldfield, Nevada.

Q. What else?

A. Under the terms of your question and complying strictly with it, that would be all.

Q. That is the extent of your experience in that line? [1634—1484]

A. Under the strict terms of your question.

Q. And you don't think Mr. F. W. Bradley's opinion on the Lotta mill site is of very much value?

A. As I stated, I do not.

Mr. HELLENTHAL.—That is all.

Judge WINN.—I would offer this photograph in evidence now.

(Whereupon said photograph was received in evidence and marked Defendant's Exhibit "Q-2.")

(WITNESS EXCUSED.) [1635—1485]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal J. R. WINN, who having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions, as follows:

**Testimony of J. R. Winn, for Defendant (Recalled in Surrebuttal).**

Direct Examination.

(By Mr. BURTON.)

Q. You remember, Judge Winn, Mr. Bradley testifying with reference to some conversation he stated he had with you, I think, at Treadwell, in July or August, 1910, wherein some mention was made by him to you concerning the right of way or reservation to be excepted from a certain deed—do you remember any such conversation?

A. I remember of, I think, about the 1st of August, 1910, meeting Mr. Bradley over at Treadwell; I was over there with Mr. Orr, electioneering for delegate to Congress, and Mr. Bradley was outside of the building, and I spoke to him about when he was going to execute the deed to Clark Hyle for a certain conflict in some mining claims up here that they had already contracted to convey—that is, the Alaska-Juneau Gold Mining Company, and Mr. Bradley stated to me that he had some important word of some kind or other and that he was going to leave the next day for California and he didn't have time to take that matter up then, but that he would take it up with Mr. Kinzie and let us hear from him

(Testimony of J. R. Winn.)

shortly afterward; there was nothing in that conversation about any reservation whatever; the original contract for the conveyance had nothing in it about any reservation and I never had any conversation with Mr. Bradley at that time or any other time about any reservation for any water right or flume line. [1636—1486]

Q. Did you ever have anything at all to do with the preparing of any deed concerning a conveyance of that conflict with the Colorado lode?

A. No; I think I turned that matter over to you, and eventually a suit was commenced to force the contract for a specific conveyance; this deed that Mr. Bradley testified as having executed on the 23d day of August, 1910, did not come to our attention until about a year afterward; they apparently sent that deed up here to Shackelford & Bayless, and they took and put a deed on record creating a reservation—that is, a right of way across this piece they were going to convey to Clark Hyle, for a right of way for a flume or some other reservation in it—that deed never came to our attention and we never knew anything about it until some time in August, 1911.

Q. That deed was placed on record by Mr. Bradley or the Alaska-Juneau Company, was it not?

A. Indeed it was; it was not placed by us, and we knew nothing about it until some time in August when Shackelford or Bayless offered to tender us the deed and we would not accept it.

Q. That was August, 1911, a year after the deed was executed?

(Testimony of J. R. Winn.)

A. Yes; August, 1910, the deed that Mr. Hellen-thal showed me this morning was executed; there was a deed afterwards drawn up by you that was not executed, and the result of the lawsuit was that the deed was given to us as declared in the contract without any reservation.

Q. You say that deed came to our attention or notice in August, 1911, a year after the date purporting to be the date of the deed? [1637—1487]

A. Yes; the first time I remember of it coming to my attention was in August, 1911; I don't know whether you knew anything about it or not; we have a copy of our letter in our office showing that we would not accept it.

Q. Do you remember the reason stated in the letter why we would not accept that deed?

A. The reason was the original contract for conveyance did not provide for any right of way across the property that they had reserved in this deed.

Q. You say another deed was afterwards executed by the Alaska-Juneau Company, to whom was that deed made, to Clark Hyle?

A. I don't know; you had charge of that; there was another deed executed, but whether it was to the Jualpa Company or Clark Hyle, I do not know.

Q. You don't know the date of that deed or when it was recorded?

A. No; the deed must have been made out after August, 1911.

Mr. BURTON.—That is all.

(Testimony of J. R. Winn.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Judge Winn, you don't mean to say that when Mr. Bradley talked to you in Treadwell he didn't say to you there was some verbal understanding between Kinzie and Mr. Clark Hyle by which it was understood that the Alaska-Juneau Company was to reserve a right of way for the flume line across that piece of ground, do you?

A. He didn't state that; he stated that he would take that up with Mr. Kinzie—he was called away suddenly and would let us hear from him.

Q. Didn't he say something of that kind, in substance? [1638—1488]      A. No, sir.

Q. Do you remember of getting a letter from Mr. Bradley about that deed a short time after that?

A. As I told you I had nothing to do about that; Mr. Burton took that up and I had nothing to do with the dealings after that until after it was closed up; I had forgotten about that deed until Mr. Bradley spoke about it on the witness-stand yesterday.

Q. You had forgotten about this deed?

A. I had forgotten about this deed being placed on record until Mr. Bradley spoke about it, and then I took up our correspondence and I found out about it.

Q. In going over your correspondence didn't you find a letter from Mr. Bradley to yourselves in which the conversation between you and Mr. Bradley was detailed, concerning the flume line business?

A. I didn't find such a letter; I didn't look for such a letter.



(Testimony of J. R. Winn.)

Q. You don't mean to say that he never did write you such a letter?

A. I haven't any remembrance of anything about that correspondence; I wasn't handling the matter.

Q. You have no remembrance about him sending you the deed and stating to you that he had made a reservation in this deed for a flume line in accordance with the conversation he had had with you at Treadwell when the matter was up for discussion between you?

A. I told you I don't know anything about any such letter; *I our* firm may have had such a letter—Mr. Burton may have received such a letter.

Q. You don't deny having received any such letter?

A. I don't deny or confirm; I have no recollection of having [1639—1489] any such letter; if we did get it it is probably in our office, if it was received.

Mr. HELLENTHAL.—I ask the production of that original letter so I may offer it in evidence with this testimony.

(Questions by the COURT.)

Q. Who is J. Clark Hyle?

A. Why, he was the successor to—

Q. I know, but what connection has he in this case?

A. He was the successor in interest of the old Jualpa Company's property up in the Basin.

Q. Who's the Jualpa Company?

A. The Jualpa Company owns a series of patented mining claims commencing at the first Gold

(Testimony of J. R. Winn.)

Creek bridge and extending up the creek to about where the Jualpa Company's dam—old dam—is built and has partly gone out.

Q. What connection, if any, have they with the defendants or the plaintiff in this case?

A. They don't have any, as I know of at all.

Q. What connection has the property over which this controversy of a right of way exists, as testified to by Mr. Bradley and is denied by you—what connection has that with this case?

A. I don't see what connection it has; the Jualpa property is a distinct piece of property.

Q. Is that a part of the property that the dispute relates to about the right of way—has that any connection with any of the claims in this suit?

A. It has not—none at all.

Q. Were you attorney for the Jualpa Company?

A. I was.

Q. And for Mr. Hyle?

A. I think the Jualpa Company had about gone [1640—1490] out of existence, and the property was held at that time, as I remember it, by Clark Hyle; it had been bought in by him.

Q. How long would it take you—Mr. Hellenthal made a request on you for some paper—how long would it take you to get that paper?

A. I will look it up at noon; I haven't any recollection of any such letter having been received; if we ever got such a letter it is probably in our office

(Testimony of J. R. Winn.)

—if any such letter was ever received it is probably in our office.

The COURT.—That is all.

(WITNESS EXCUSED.) [1641—1491]

The defendant, to further maintain the issues on its part, introduced as a witness in surrebuttal L. E. VAN WINKLE, who, having duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of L. E. Van Winkle, for Defendant (In Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. What is your full name?

A. L. E. Van Winkle.

Q. Where do you live, Mr. Van Winkle?

A. Juneau.

Q. How long have you been here?

A. A little over a year.

Q. What is your business? A. Abstracting.

Q. I will ask you, Mr. Van Winkle, if you some time ago were engaged by our firm to go over the records of the Juneau Recording District here in Juneau for the purpose for ascertaining and obtaining some data as to the number of water location notices that up to that date had been filed in the Juneau Recording District—in the recorder's office?

A. I was.

Q. I will ask you if you made such a search of the records? A. Yes, sir.

(Testimony of L. E. Van Winkle.)

Q. Were you in the courtroom at the time Mr. Marshall produced a record of the number of water location notices and testified to other data concerning certain locations of water that had been made and filed in the office of which he is recorder at the present time? [1642—1492] A. Yes, sir.

Q. I will ask you if according to the instructions by our firm you made a systematic and careful examination of the records of the Juneau Recording District for the purpose of ascertaining such data as we had instructed you to obtain? A. Yes, sir.

Q. How long, approximately, have you been working upon that, Mr. Van Winkle, in getting out the data that we required you to get out?

A. Why, something over a week, preparing to search, making the search, and making the notes that I prepared in abstracting the locations.

Q. Have you had any experience, Mr. Van Winkle, prior to the time we engaged you to do this work, in the examination of records in this recording district?

A. Yes, only so far as the recording of deeds is concerned; our company has taken off part of the records of deeds.

Q. What is your company doing—preparing data to have in your office for the purpose of running an abstract office?

A. Yes; preparing data for an abstract office, and taking records off for an abstract business.

Q. With the experience that you have had then with the records of this recording district, I will ask

(Testimony of L. E. Van Winkle.)

you if you have become familiar with the records which are in this recording district?

A. Yes; most of them.

Q. Mr. Van Winkle, Mr. Marshall has produced a certain list of water location notices which have been recorded in this district; I will ask you if you have prepared also a list from the records of the water location notices, and obtained other data from your going through the same volumes that Mr. Marshall [1643—1493] testified that he went through, which is commencing with Volume 1 of Lodes and Placers and extending down to Volume 11 of Placers, inclusive?

A. Yes; I think that covers the same volumes that I went over and that Mr. Marshall has in his list.

Q. Now, I think Mr. Marshall testified that he had examined the records of the location notices of water and that those notices which he testified concerning were obtained from those volumes. I will ask you if you have examined the records of the Juneau Recording District to ascertain if there are any other books besides Volume 1 of Lodes and Placers down to and including Volume 11 of Placers, that contains a record of any location notices? A. Yes, sir.

Q. What books of record, Mr. Van Winkle, did you find any other water location notices in?

A. There are water location notices in some of the volumes of Lodes—Lode claims.

Q. What volumes of Lode claims, did you, in the examination of the records, find the record of any water location notices in?

(Testimony of L. E. Van Winkle.)

A. I cannot recall them—I have made a list of them—4 and 7.

Q. I will ask you—to refresh your memory I will hand you this memorandum and ask you to state to the Court what volumes outside of the volumes Mr. Marshall testified to you have examined and found water location notices?

A. I found water location notices in Volumes 2, 4, 7, 8, 9, 11, 14, 15, and 20 of Lodes.

Q. Have you checked over these locations that you found in the books you just mentioned, with the numbers and names of the water locations which are contained on the exhibit which [1644—1494] was introduced when Mr. Marshall was on the stand?

A. Yes, sir.

Q. Does the list which Mr. Marshall has given include any of these location notices which you obtained from the volumes you have just mentioned?

A. No.

Q. How many water locations, Mr. Van Winkle, did you find in these volumes that you have examined in addition to the water location notices that Mr. Marshall had in his exhibit?

A. I think there are 39.

Q. Now, you have also been presented with a description that was given in evidence upon this trial what constituted at one time the Harris Mining District, have you not?

A. Yes, sir; in examining the record.

Q. You were given that description from the records? A. Yes, sir.



(Testimony of L. E. Van Winkle.)

Q. And that description, Mr. Van Winkle, as you obtained it from the records—is that the same description that was offered in evidence in this case from the records from the old Juneau Recording District?

A. I don't think I was present when those were given; I believe Mr. Marshall did give that boundary, however, in his testimony.

Q. Well, you have examined the records of the Old Juneau Recording District to ascertain the two descriptions? A. Yes, sir.

Q. At one time there was one piece of territory included in the Juneau Recording District, and afterwards it was changed; I wish you would give, so as to have the record show plainly what you used as the boundaries of the Harris Mining District— [1645—1495] the two different descriptions that you used in searching the records to ascertain where the water locations were made?

A. I only used one of the boundaries; I don't think there are any water locations made prior to the time of adopting these amended boundaries of the district.

Q. Now, the description of the Harris Mining District that you used is the amended one, and I wish you would give the description of it, Mr. Van Winkle?

A. It begins at the Auk Village, runs northeast in a true line to the British boundary line, the line between British Columbia and Alaska, and follows the boundary line to the Taku River, down the Taku

(Testimony of L. E. Van Winkle.)

River to the Inlet, and down the Inlet to Stephen's Passage, and then along Stephen's Passage to the place of beginning.

Q. That is the description that you used in searching the records and for the purpose of ascertaining where certain water locations were made?

A. Yes, sir.

Q. Now, I will hand you this paper—I will first have it marked for identification Defendant's Exhibit "R-2"—and ask you if you made up this list?

A. Yes, sir; I prepared it.

Q. That is the list that covers all the volumes of the Juneau records, Mr. Van Winkle?

A. It covers Volumes 1 to 11, inclusive, of Placers and Water Locations.

Q. This list that you have in your hand does not contain the record of other water location notices that you found in some other books that you have testified concerning? A. No, sir. [1646—1496]

Q. Now, I will ask you, Mr. Van Winkle, as to what data you *you* were requested to gather and include in this report concerning the water location notices made within the boundaries of the Harris Mining District as described by you a few minutes ago?

A. I was asked to show the number of water locations.

The COURT.—I don't think that is a material question.

Q. Well, what data did you secure from the records of these placer books, from 1 to 11, inclusive?

(Testimony of L. E. Van Winkle.)

A. Well, first, I showed the name of the locator of each location, volume and page where it is recorded, the date of the instrument, of the notice, when given; the date of filing it; the posting date, where there was one; the number of miner's inches claimed; and the place of intended use.

Q. Now, in this exhibit which you hold in your hand, you have placed all of these facts in it, have you, as you have gotten it from the record?

A. Yes, sir.

Q. Now, I will ask you, Mr. Van Winkle, as to whether or not you have marked in this exhibit any location notices that, according to your judgment, were not within the boundaries of what you have defined was formerly the Harris Mining District?

A. Yes, sir; when I first took up the list I didn't know that I was to confine the search to the Harris Mining District, so I took off what I considered were in the recording district.

Q. That would have included all of the notices that were recorded in the Juneau Recording District? A. Yes, sir. [1647—1497]

Q. Now, I will ask you if you have indicated on this exhibit such water location notices as, in your judgment, are within the boundaries of the Harris Mining District, and those, that in your judgment, were without the Harris Mining District?

A. Yes, sir.

Q. In doing that I will ask you how many water location notices have you found in Volumes 1 to 11, inclusive, that, according to your judgment, are

(Testimony of L. E. Van Winkle.)

within the boundaries of what was formerly the Harris Mining District?

(Question not answered because of objection.)

Q. Now, I will ask you, Mr. Van Winkle, if you have made any investigation to find out approximately where the lines describing the Harris Mining District, as indicated by you a while ago, run?

A. Yes, I have indicated the boundaries on the map as nearly as I could from the description given and the boundary lines in the articles.

Q. And in this investigation you made as to the boundary lines, I will ask you if you also in ascertaining the knowledge of what claims were within that district, made any inquiries concerning rivers, creeks, and so forth, that were within the exterior boundary lines of this old Harris Mining District?

A. Yes; I have made inquiries.

Q. Now, then, Mr. Van Winkle, I will ask you how many of these water locations that you have on this exhibit did you find to be within the exterior boundary lines of the Harris Mining District as you just defined it a while ago?

(Question objected to and reasked.) [1648—1498]

Q. You remember the question—I want to include in that question all the claims you have found, both in the Placers from 1 to 11, inclusive, and these other volumes that you testified you found water location notices in—all of those—within the boundaries of what has been defined as the old Harris Mining District?

(Testimony of L. E. Van Winkle.)

A. I have 456 altogether in both sections.

Q. Now, this exhibit that you hold in your hand, Mr. Van Winkle, which has been marked for identification "R-2," I will ask you if you have compared it with the exhibit which has been offered in evidence in this case, identified by Mr. Marshall?

A. Yes, sir.

Q. I will ask you in going through Volumes Nos. 1 to 11, inclusive, of Placers, which were testified to by Mr. Marshall as being the ones he investigated, did you find any other water location notices other than which are contained in the exhibit which has been identified by Mr. Marshall? A. Yes, sir.

Q. In going through those books 1 to 11, through the same books that Mr. Marshall testified concerning, how many more water location notices did you find than were contained in the exhibit identified by Mr. Marshall?

A. I don't remember the exact number, but something around 40; I think I have indicated that in this search.

Q. You have indicated them on this exhibit you have in your hand? A. Yes; this exhibit.

Q. Now, then, how did you indicate them on this exhibit?

A. Well, in checking—I indicated in checking this list with the other exhibit, when I found a location here not found on [1649—1499] the other exhibit I marked it omitted in the left-hand margin, showing that the ones that I have in this list are not shown in that list.

(Testimony of L. E. Van Winkle.)

Q. That is, they are shown that way on this exhibit you hold in your hand, so as to indicate that those are not contained on the Marshall exhibit?

A. Yes.

Q. Now, then, this exhibit contains the data that you just testified concerning a while ago?

A. Yes, sir.

(Whereupon court adjourned until 2 o'clock.)

### AFTERNOON SESSION.

August 13th, 1914, 2 P. M.

L. E. VAN WINKLE, on the witness-stand.

Direct Examination (Cont'd).

(By Judge WINN.)

Q. Now, again referring to Defendant's Exhibit "R-2" for Identification, Mr. Van Winkle, I will ask you to state fully to the Court how you have indicated on this exhibit the water location notices that were omitted in the Marshall list?

A. By marking in the left-hand margin the word "Omitted."

Q. Now, then, were all of these water locations that were omitted by Mr. Marshall within the Harris Mining District; if not, how have you marked those that are within the Harris Mining District?

A. No; a great many of them are outside of the Harris Mining District; the ones I considered to be outside I have marked on the opposite of the page "Outside of district"; the ones I considered to be in the district I didn't mark at all that is, left them in this exhibit. [1650—1500]



(Testimony of L. E. Van Winkle.)

Q. Those that you have marked outside of the district have you included them in this number of 456 that you say you found within the Harris Mining District? A. No; I have excluded them.

Q. As I understood you to state to the Court this morning, you prepared this list, giving all of the location notices within the Juneau Recording District?

A. In the first place, yes.

Q. Now, wherever you have gone through this list and found there was a water location outside of the Harris Mining District, how have you indicated that?

A. By marking on the right-hand margin "Outside of district."

Q. Now, I wish you would turn to this exhibit and give just a few of those water location notices which were evidently overlooked by Mr. Marshall and showed plainly that they are within the district?

A. Here is one, in Volume 2 of Placers, page 81.

Q. What creek is this on—what place?

A. Claimed 300 inches of water from Snow Slide gulch.

Q. Will you give me another one?

A. Another one on the same page, 200 inches of water to be taken out, at or near the head and near the northwestern corner stake of the Mexican mine; and the use given, Mexican and Jualin quartz locations, Douglas Island.

Q. Give me another one.

A. Another one on page 85; same volume; claimed 800 inches from Ready Bullion Creek.

Q. Does it say on what island, or in what place?

(Testimony of L. E. Van Winkle.)

A. Place of intended use the Blue Lead gulch claim.

Q. Any more?

A. One in Volume 3 of Placers, page 58; reservoir and water [1651—1501] power locations on Gold Creek at a point about two and one-half miles from the town of Juneau.

Q. (Question by Mr. HELLENTHAL.) Who is that by?

A. That is by J. A. Johnson; in Volume 3, page 90, claimed 2,000 miners' inches of water from Salmon Creek.

Q. Well, go ahead with another one?

A. In Volume 5, page 35, 1,000 inches of water from Glacier Creek, which empties into Gastineau Channel.

Mr. HELLENTHAL.—Is that by J. G. Peterson?

A. I believe it is by J. G. Peterson; yes. Volume 5, page 136, all the water of springs situated on the mountain side at the head of Third Street in the town of Juneau.

The COURT.—Who located that?

A. Lewis Lund. Volume 5, page 137, 1,000 inches of water on east branches of Cowee Creek—spelled with C. Volume 6 of Placers, page 70; claimed 1,500 miner's inches in this stream; place of intended use, Blue Gravel Mine at the falls of the west bend of McGinnis Creek, Harris Mining District. Volume 7, page 68, 500 miner's inches of water from a certain mountain stream coming from the mountain

(Testimony of L. E. Van Winkle.)

north of Last Chance Basin and flowing into said Basin.

Q. Who is that made by, Mr. Van Winkle?

A. The Last Chance Gold Mining Company by I. N. Gordon, Superintendent. Volume 8, page 131, 10 cubic inches per second of time of water of Quartz Creek which is a right-hand tributary of McGinnis Creek; locator, the Southeastern Alaska Mining & Milling Company. Volume 8, page 217, all water rights and tributaries of this creek situated 100 yards east of Auk Village. Volume 8, page 230, ground for a cannery site, including all water rights, appertaining to said ground, at the head of Douglas Island and near what is [1652—1502] known as Fritz's Cove. Volume 10 of Placers, page 129, 1,000 miner's inches of water of Glacier Creek, Berner Bay District, Harris Mining District; locator, Stewart Wood. Volume 10, page 132, all the water of certain streams situated on the mountain side one-half mile north of Lewis Lund's homestead. Volume 10, page 141, 50,000 miner's inches of water of Twin Creek near Juneau; two of them of page 141.

Mr. HELLENTHAL.—The other one is Turner Lake, isn't it? A. Yes.

Mr. HELLENTHAL.—Both by R. A. Kinzie?

A. R. A. Kinzie, and page 144, 10,000 miner's inches of water of Kar Creek near Juneau.

Mr. HELLENTHAL.—That is by Rob't A. Kinzie, isn't it?

A. Rob't A. Kinzie; yes. Volume 10, page 157, 2,000 miner's inches of water of Granite Creek.

(Testimony of L. E. Van Winkle.)

Mr. HELLENTHAL.—Is that C. F. Stites and John W. Clark?

A. Yes. Volume 11, page 26, 2,000 miner's inches of head waters of Sheep Creek Basin.

Q. Who is that by, Mr. Van Winkle?

A. Harry Lott.

Q. Where is that to be taken to, does it say there?

A. It doesn't give the place of intended use. Volume 11, page 64, 6,000 miner's inches of water of Sheep Creek.

Q. Who is that by? A. W. R. Lindsay.

Q. Where is that to be taken to, Mr. Van Winkle?

A. To the Treadwell mine.

Q. That is Sheep Creek, didn't you say?

A. Yes. Volume 11, page 225, the water flowing in streams running through locators' placer claims, except enough for domestic use of occupants of Reynolds and Watt's cabins; located [1653—1503] by Mrs. Ella Turner.

Q. Does that indicate where the water is to be taken to?

A. To the locator's claims—no. Page 254, 175,000 miner's inches of all of the water of Turner Lake and Turner Creek. Page 255, water springs from and percolating through the hillside on locator's lots, which is situated immediately at the exterior boundary line of the municipality of Juneau, and at the intersection of the bridge crossing Gold Creek on the road leading to and from the cemetery.

Mr. HELLENTHAL.—When was that recorded?

(Testimony of L. E. Van Winkle.)

A. Recorded May 16, 1914, N. O. Warner is the locator.

Q. Where is this Cowee Creek that appears from the record?

A. I think there are two Cowee Creeks, *on* spelled with C and one spelled with K—various places in the record gives Cowee Creek spelled with a C as being on Douglas Island.

Q. Now, as I understand where you have the word “Omitted” on the left-hand side of the sheet of paper in this exhibit, without saying anything further about it, that is to show that it is a water location notice that you have located as being in the Harris Mining District, and is one that is omitted from the Marshall exhibit?

A. No; when you simply find the word “Omitted” on the left-hand margin it means that location notice is omitted from the Marshall exhibit.

Q. And is in the Harris Mining District?

A. No; it may not be in the Harris Mining District; in most cases it is not.

Q. Now, those that are omitted from his list which are in the Harris Mining District, how have you indicated them on this list?

A. If I considered that they were in the Harris Mining District [1654—1504] I haven't *check* them at all on the right-hand margin, but if they are outside the Harris Mining District I have marked “Outside of district”; the ones marked “Omitted,” with no notation on the opposite side of the page I have left in as being in the Harris Mining District.

(Testimony of L. E. Van Winkle.)

Q. Now, you testified this morning something about finding quite a number of location notices of water in other books than these placers, numbered from 1 to 11, inclusive? A. Yes, sir.

Q. I will hand you this paper which has been marked for identification Defendant's Exhibit "R-2," and ask you if that is a list of such water locations? A. Yes; that is a list.

Q. Now, that list that you have, does that likewise show all of the water locations in those volumes that are indicated therein, or does it just show those that are located in what they term the Harris Mining District?

A. I attempted to take off only the ones that were in the Harris Mining District; I think there are probably two or three in here that are outside, that I afterwards decided were outside of the district, and I marked them afterwards "Outside of district."

Q. You have indicated on the margin of this paper those that are outside of the district, to the best of your knowledge, and you have so marked them?

A. Yes, sir.

Q. Now, how many water location notices have you found enumerated in this paper writing that were not on the list furnished by Mr. Marshall?

A. I haven't estimated them. [1655—1505]

Q. Will it take you long to count them?

A. Not very long—37, I have.

Q. Now, Mr. Van Winkle, have you gone over all of those water location notices as you found them of



(Testimony of L. E. Van Winkle.)

record, and as you have them here, and estimated that number as 456? A. Yes, sir.

Q. And you have a front page on this exhibit you have been testifying from, on which you have made certain memoranda, have you not? A. Yes, sir.

Q. That memoranda is on that front sheet?

A. Yes, sir.

Q. Now, I will ask you, Mr. Van Winkle, to state briefly to the Court as to the designation of the point to where the water is to be applied—that is, I wish you would classify them—if there are some which you say have a specific point, and some others which have a general point, and some of them have some mining claim or water right without giving the number—I wish you would state to the Court generally how those water locations run, and then we will get at the average which you have made of those that have designated the use in one way and then in another?

(Question not answered because of objection.)

Q. Now, we will go back then to this total number of locations 456. Now, have you examined the records to ascertain, and have you the notices on this exhibit to show how many water location notices have the date of the notice and the date of posting and also ascertaining the date of the recording of the same? A. Yes, sir. [1656—1506]

Q. How is that identified on this first page of this exhibit that you have been testifying about?

A. You mean how many there are showing a date on the notice and no posting date?

(Testimony of L. E. Van Winkle.)

Q. Yes.

A. I have 69 showing the posting date, and the others show no posting date.

Q. Now, I would prefer if you would, Mr. Van Winkle, so the Court will have before him the whole thing, go over the list just as you have it made out—you have got total number of locations, 456—now, what is the next memorandum you have on that?

A. Recorded within 10 days of date of notice, which notices do not show the date of posting, 274.

Q. Now, you have examined the records and ascertained that that is true, to the best of your knowledge and belief?      A. Yes, sir.

Q. Now, what is the next memorandum you have there?

A. Recorded within 10 days from date of posting as shown in notice, 35.

Q. Now, the next one?

A. Not recorded within 10 days from date of notice, which notices do not show date of posting, 95.

Q. And the next one?

A. Not recorded within 10 days from date of posting as shown in the notice, 34, and I have without date or other means of determining time, 18.

Q. That makes up the full 456?      A. 456.

Q. Now, then, in the examination of these water notices, have you made any notation as to how they have run with reference [1657—1507] to the place that the water was to be used, and if you have, give that memoranda?

A. Locations showing general places of use, 203.

(Testimony of L. E. Van Winkle.)

Q. What do you mean by general place of use, Mr. Van Winkle?

A. Well, in cases where I could determine from the record just where the water was intended to be used.

Q. Suppose it was said to be taken to and used upon a group of mining claims, would you put that under that head of 203?

A. Yes; I would say that was general.

Q. Now, you have marked those on this exhibit by the capital letter A, as you went through the exhibit?

A. Yes.

Q. Now, you have another one that you have marked B, what is that?

A. Locations showing no place of use, one hundred and thirty.

Q. Now C, what is that?

A. Showing specific place of use.

Q. How many is that? A. 19.

Q. Now, the others, D?

A. I made another class D, locations showing some claim, townsite or mill site, but no particular place of use, 104.

Q. Now, then you have another notation made below that, explain that to the Court—total number of locations showing posting date, how many?

A. 69.

Q. Now, go ahead with the others.

A. Number showing posting date prior to date of notice, 19.

Q. That is, the paper would show that is had been

(Testimony of L. E. Van Winkle.)

posted before the particular paper was recorded?  
[1658—1508]

A. Number showing posting date subsequent to date of notice, 5; number without date, or of either date, 45.

Q. Now, how have you marked those on the margin of this exhibit—by what letters have you marked them?

A. Well, I have placed an X on the right-hand margin opposite where no date was given in the notice, and O where no recording date is shown; and O with an X inside where posting date is given in the notice, and simply an ordinary checking mark where not filed within the 10-day limit.

Q. Now, did you find out how many of these 456 notices did not designate the water to be appropriated by miner's inches?     A. Yes.

Q. How many have you of those?

A. I have 76 referring to "this creek or all of the creek" or language to that effect.

Q. On these exhibits and in the various notices of water locations you have given the language of the notice pertaining to the place of designation, have you not, Mr. Van Winkle?

A. Yes; in most cases you will find it quoted.

Q. As I understand, where it designated a group of claims you put it under the head of general; and then you made another segregation where it took it to one particular mining claim or town site, and then you put that under another head?

(Testimony of L. E. Van Winkle.)

A. Yes; where there was only one mill site or town site.

Q. Now, Mr. Van Winkle, John G. Heid testified in this case concerning the making of certain location notices—I don't know what he stated about making the location notices in the Harris Mining District, but I will ask you to turn to your record that you have there of Volume 3 of Placers, Page 19, and see if you can find any water location notice made within the so-called Harris Mining District by John G. Heid and [1659—1509] others?

A. Yes, sir.

Q. You have it there?

A. John G. Heid and John G. Smith.

Q. I wish you would just read that one off to the Court?

(Question not answered because of objection.)

Q. I wish you would look at Volume 2, Page 271 of Lodes and find if the Cowee Creek is in any way designated by any water location notice? A. Yes, sir.

Q. Where is it designated as being?

A. Douglas Island, Harris Mining District.

Judge WINN.—Now, the first is in Volume 3 of Placers, Page 19. I now offer that in evidence, if your Honor please; this is a water location notice and is contradictory to Mr. Heid's testimony as to the practice, and so forth, in making a location and recording it, and I wish to have it read into the record.

(Objected to and objection sustained.)

(Testimony of L. E. Van Winkle.)

Q. Do you know where Bear Creek is as shown by these locations that you have testified from?

A. On Douglas Island somewhere.

Q. Granite Creek, do you know about that, is that referred to in some of the notices?

A. That creek is somewhere in the Silver Bow Basin up around there.

Q. Have you seen that creek personally, Mr. Van Winkle?

A. I don't know which one it is—I probably have.

Q. Well, you know where Sheep and Salmon Creeks are, don't you?

A. Yes, I have seen both of those.

Q. Where is Sheep Creek with reference to what has been termed [1660—1510] the boundaries of the Harris Mining District?

A. Within the boundaries.

Q. And Salmon Creek?

A. Also within the boundaries.

Mr. HELLENTHAL.—Judge, I have looked at that book and I will withdraw the location that it is not authenticated—it is one of the records.

Judge WINN.—We would like to have this notice read into the record, if your Honor please, the one that Mr. Heid had his name signed to in Book 3 of Placers, at Page 19.

(Whereupon said notice was read into the record as follows: “Know all men by these presents that, we, the undersigned, have this 30th day of July, 1885, located and claimed a certain water right and claim 150 inches of water of a certain creek, which



(Testimony of L. E. Van Winkle.)

empties into Steven's Straits upon Douglas Island on the Southern side thereof about three miles of or from the east end of Douglas Island, the location notice of this water right is situated on said creek a distance of about 4000 feet, being a stake, in mound of stone, about 350 feet south of the location notice of the Canal View lode on bank of said creek. This water so located and claimed is to be used in working and mining the Canal View and Sun Down lodes; all in the Harris Mining District, Alaska Territory. Signed, John G. Smith, J. G. Heid. Filed for record at 3 o'clock P. M., August 18th, 1885; and duly recorded in Book 3 of Placer Locations, at Page 19, of the records of said district. Henry Staates, District Recorder.")

Judge WINN.—In Volume 3 of Placers, Page 24.

(Whereupon said notice was read into the record as follows: [1661—1511] "Know all men by these presents that we, the undersigned, have this 14th day of August, 1885, located and claimed a certain water right of 150 inches of water of a certain creek emptying into Steven's Straits, and situated upon Douglas Island, upon the southern side thereof, about one mile west of the east end of Douglas Island, about 2500 feet up said creek, from salt water, where water right notice of this said water claim is posted 20 feet east of the south corner post of the White Eagle lode. This said water is claimed and to be used in working and mining the White Eagle and Belle of the Rink lode. All in the Harris Mining District, Alaska Territory. Signed,

(Testimony of L. E. Van Winkle.)

A. T. Ellis, J. G. Smith and J. G. Heid, claimants. Water rights, Territory of Alaska, Harris Mining District, ss. The within certificate record was filed for record at 1:10 o'clock P. M., August 26, 1885, and duly recorded in Book 3 of Placer Locations at Page 24 of the records of said District. Signed, Henry Staates, District Recorder.")

Judge WINN.—Also Volume 3 of Placers, Page 26.

(Offer objected to.)

Q. Do you find, Mr. Van Winkle, these Heid location notices in the exhibit that Mr. Marshall identified.

A. Yes, sir; I find those so far as you have given.

(Whereupon said notice was read into the record as follows: "Know all men by these presents that we, the undersigned, have this 13th day of August, 1885, located and claimed a certain water right of 150 inches of water of a certain creek emptying into Steven's Straits and situated upon Douglas Island, upon the southern side thereof, about one and one-half miles west of the east end of Douglas Island, about 2500 feet up said creek from salt water, where the water [1662—1512] right notice is posted 150 feet west of the Belle of the Rink lode. Said water is claimed and to be used in working and mining the White Eagle and Belle of the Rink lodes, all in the Harris Mining District, Alaska Territory. Signed, A. T. Ellis, J. G. Smith and J. G. Heid, claimants. Water rights, Territory of Alaska, Harris Mining District, ss. The within certificate was filed for rec-

(Testimony of L. E. Van Winkle.)

ord at 1:20 o'clock P. M., August 26th, 1885, and duly recorded in Book 3 of Placer Locations at Page 26 of the records of said district. Signed Henry Staates, District Recorder.")

Judge WINN.—And there is one more in Volume 10, Page 36.

(Offer objected to and objection sustained.)

Judge WINN.—I now offer these two exhibits in evidence, if your Honor please.

(Whereupon said lists of water locations were received in evidence and marked Defendant's Exhibit "R-2" and "R-2" plus respectively.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. I hand you here Plaintiff's Exhibit No. 41, Mr. Van Winkle, and I have here before me Defendant's Exhibit "R-2," which is your list, and I am directing your attention now to a notice marked here as omitted, the same being, locator, Robert Dunn, Evan Williams and John Cranston; this is given by you as being dated on November 22, 1881, and filed for record February 8th, 1882, and claims 300 inches of water from Snow Slide gulch, found on Page 81 of Book 2 of Placers. I now direct you to the exhibit which you have in your hand, the same being Exhibit 41, on the second page and ask you if you do not find there that notice, R. Dunn and Evan [1663—1513] Williams, 300 inches, Snow Slide gulch, November 22, 1881, recorded February 8th,

1832 *Alaska-Juneau Gold Mining Company vs.*

(Testimony of L. E. Van Winkle.)

1882, Book 2, Page 81, designated X O—you find that there, don't you?

A. I find it with the exception of the year, it seems to be '82.

Q. It was recorded in 1882, wasn't it?

A. Yes; dated '81 and recorded '82.

Q. That is the same notice you referred to as being omitted, isn't it?

A. Volume 2. Page 81—that is the same notice.

Q. That notice wasn't omitted from exhibit No. 41, then, was it? A. Apparently it was not.

Q. You made a mistake in regard to that notice. I find on the same page in exhibit "R-2" notice marked, locator, S. Lewis; dated January 29th, 1882; filed for record February 9, 1882; claiming two inches of water to be taken out at or near the head and near the northwestern corner stake of the Mexican mine; place of intended use, Mexican and Jualin quartz locations, Douglas Island. This notice is reported on Page 81 of the same book. I now direct your attention to exhibit No. 41, on the bottom of Page 2—don't you find that notice there—the third notice from the bottom?

A. I think it is the same notice, recorded February 9, 1882.

Q. Recorded February 9th, 1882, Page 81—that is the same notice, isn't it?

A. That evidently is the same notice.

Q. You made a mistake then that that notice was omitted—it wasn't omitted from Mr. Marshall's record, was it?

(Testimony of L. E. Van Winkle.)

A. Evidently made a mistake there.

Q. Now, the next one on that same page of your exhibit "R-2" is also marked omitted—this notice is Sam Roy & Company [1664—1514] located March 24, 1882; filed for record March 25, 1882, claiming 800 inches of water from Ready Bullion Creek; place of intended use, Blue Lead gulch claim; Book 2 of Placers on Page 85. I now call your attention to exhibit No. 41, bottom of Page 2, and ask you if that same notice doesn't there appear, Sam Roy, 800 inches Ready Bullion Creek, March 24, 1882, Book 2 of Placers and Page 85—the same notice appears there, doesn't it? A. I think so.

Q. Then there is another place that you made another mistake and that notice was not omitted by Mr. Marshall—that is right, isn't it? A. Yes, sir.

Q. Directing your attention now to a notice that is given by you as appearing on Page 133 of the record, in Book 2, being a location of A. E. Evans for the Eureka Mill Company; dated August 21, 1882; filed for record September 1st 1882; claiming all the water in a gulch or a ravine known as the Taku Mill site gulch; place of intended use; Eureka Mill Company's claim—you know where the Eureka Company's claims are, don't you?

A. No, I don't.

Q. How did you happen to place that within the Harris Mining District without knowing where they were?

A. What is the creek given—I didn't know I had that.

(Testimony of L. E. Van Winkle.)

Q. The creek is given, in a gulch or a ravine known as Taku Mill site gulch.

A. Is that all there is given?

Q. That is all there is given—you don't know whether that is within the Harris Mining District or without the Harris Mining District, do you?  
[1665—1515]

A. No, not absolutely certain of that.

Q. You just took a guess at that?

A. I think it is within the district.

Q. What makes you think it is within the district?

A. Something appearing in some other part of the record, I think; I could not cite a specific one and say.

Q. You have no idea where the Eureka Company's claims are, have you?

A. No; I have no idea where they are.

Q. If those are outside of the district, then you have made a mistake in placing this notice within the district?     A. Certainly.

Q. I now direct your attention to a location supposed to have been made by J. A. Johnson, on Page 58 of Book 3; this is located by J. A. Johnson; dated July 14, 1886; filed for record July 14, 1886; claiming reservoir and water-power locations on Gold Creek at a point about 2½ miles from the Town of Juneau; place of intended use, Johnson Mill and Mining Company's mill site—that isn't a water location notice, Mr. Van Winkle, is it—that is a power site and reservoir notice—what do you say as to that?

A. I couldn't say unless I saw the record; there



(Testimony of L. E. Van Winkle.)

may be something in the records that gave it as a water location.

Q. You took it for a water location?

A. Yes; I think it is a water location.

Q. The next one marked on this is the location of R. G. Willoughby; dated July 15th, 1886; filed for record August 9, 1886, claiming all the water of Canyon Creek; place of intended use Silver Dick and Little Jennie lodes, and recorded on Page 60 of Volume 3—Canyon Creek is on Admiralty Island, almost one hundred miles outside of the northwest boundary [1666—1516] of the Harris Mining District, isn't it? A. I don't know it to be.

Q. Doesn't the notice also designate Copper Bay as being the place where Canyon Creek is located?

A. Copper Bay?

Q. Yes. A. Not that I remember.

Q. Do you have any idea where Canyon Creek is?

A. I think Canyon Creek is on Douglas Island.

Q. Where on Douglas Island did you find Canyon Creek? A. I could not tell you.

Q. You don't anything about it—you don't know that Canyon Creek is on Admiralty Island?

A. I don't believe it is.

Q. What information have you that ever led you to believe there was such a creek as Canyon Creek on Douglas Island?

A. In arriving at most of those, I took things that appeared in other places in the record.

Q. Did you ever have any information as to where it was? A. No.

(Testimony of L. E. Van Winkle.)

Q. Do you know where the Silver Dick and the Little Jennie lodes are?

A. No, I don't know anything about it except what I found in the records.

Q. You just put that in because you guessed it was there on Douglas Island?

A. I think it is on Douglas Island.

Q. You thought it was on Douglas Island, but you had no information as to where Canyon Creek was?

A. There was something in the record or I wouldn't have put [1667—1517] it in.

Q. Now, where or what led you to believe that Canyon Creek was on Douglas Island, if you know?

A. I cannot tell you anything more than I have.

Q. And the fact is, you don't know anything about the location of Canyon Creek?

A. I don't know anything about the definite location of Canyon Creek.

Q. And then when you put in in your record that this was omitted, you put that in without knowing where Canyon Creek was. I call your attention to another location made by Dick Willoughby that you have marked as being outside of the district, as to the water in the creek known as Wild Goose Creek, on Admiralty Island—you didn't compare the two notices to find out any reason why you should put one in and leave the other out, did you?

A. That notice states quite clearly where it is.

Q. But when you came to Dick Willoughby's location did you have a suspicion they might be the same place? A. Not necessarily.

(Testimony of L. E. Van Winkle.)

Q. You made no comparison between the two claims to see where one was with reference to the other? A. I did not; no.

(Last question withdrawn.)

Q. I now direct you to the next notice that you have as being omitted from Mr. Marshall's list, as being within the Harris Mining District, the notice of Pat McClinchy and Thomas J. McCully, Page 90; dated May 27, 1887; filed for record May 27, 1887; posted May 10th, 1887; claiming 2,000 miner's inches of water from Salmon Creek; place of intended use, [1668—1518] Early Bird mining claim. I now direct you to Page 7 of Mr. Marshall's lists, exhibit 41, about the middle of the page, and see if you do not see there a notice where Pat McClinchy and Tom McCully located on Salmon Creek, May 27, 1887; recorded May 27, 1887; Book 3 of Placers, Page 89—you find it there, don't you?

A. Yes; there is such a notice here.

Q. Then that notice was not omitted from Mr. Marshall's list?

A. I didn't catch the page you gave there.

Q. The page you gave is Page 90, and the Page there is 89, but the notice that is described is the same notice, isn't it?

A. It appears to be the same notice.

Q. You made a mistake then in marking that as being one of the omitted notices, didn't you?

A. The page is not the same, and I wouldn't say that I did, and there isn't enough data on this list for me to tell.

(Testimony of L. E. Van Winkle.)

Q. The notice is the same and the dates are the same except the page given in the record in one place is 89 and the other 90? A. Yes, sir.

Q. That is the reason you marked that omitted, you found on that exhibit a notice where Pat McCully appeared just as described in the other exhibit?

A. The same name.

Q. Do you find on your exhibit another notice by those gentlemen given on page 89? A. No, sir.

Q. There is no other notice given?

A. Not there.

Q. It must be that those two notices given by you as omitted [1669—1519] and the one that appears on exhibit 41 are the same—is that not true?

A. I wouldn't say so; the number of inches are not given in Salmon Creek, and it might be in different locations.

Q. If they are not the same, then you have neglected to put in your list a notice that occurs in Mr. Marshall's list—is that not true?

A. That would be right.

Q. I call your attention now to the next one that you have omitted by Mr. Marshall, the notice of William Ripstein and John Regan, which occurs on Page 97 of the Book we have been dealing with, Volume 3, as you have given it here; the date of notice is August 24, 1887; filed for record September 6th, 1887, claiming 500 inches of this creek—how did you come to put that within the Harris Mining District?

A. Is there any other information given there?

Q. That is all the information given on your ex-

(Testimony of L. E. Van Winkle.)

hibit. A. I don't remember.

Q. Do you know Mr. Ripstein?

A. No; I don't know him.

Q. Do you know John Regan? A. I think not.

Q. You know that both those gentlemen mined outside of the Harris Mining District, don't you?

A. No; I don't know anything about it.

Q. Why did you show that notice as being within the Harris Mining District?

A. I couldn't say; unless I saw the records; undoubtedly there was something that caused me to think so; there was nothing that caused me to think it was outside. [1670—1520]

Q. The next one is the location made by C. S. Blackett, page 98; dated September 2, 1887; filed for record September 19, 1887; claiming water right commencing 100 yards up Thompson Creek—how did you happen to put that in the Harris Mining District?

A. Because I think Thompson Creek is in the Harris Mining District.

Q. Where is Thompson Creek?

A. I couldn't say.

Q. It is in Berner's Bay District, isn't it?

A. Berner's Bay is up close to the line, and I think Thompson Creek is in the Harris Mining District.

Q. Isn't Berner's Bay District one hundred miles from the nearest boundary of the Harris Mining District? A. I couldn't say.

Q. Montana Mining District is between the Berner Bay District and the Harris Mining District,

(Testimony of L. E. Van Winkle.)

isn't it?     A. I couldn't say.

Q. You didn't know that there was an old Montana Mining District, did you?

A. Yes; I knew there was one.

Q. Now, where did you place this Thompson Creek?

A. I think it is about on the boundary line of the Harris Mining District.

Q. What direction does it flow?

A. I couldn't tell you.

Q. Where is its head?

A. I couldn't tell you that.

Q. You don't know within one hundred miles where its head is, do you [1671—1521]

A. Within one hundred miles?

Q. Yes.     A. I think I do.

Q. Where does it empty into the channel?

A. I couldn't say that.

Q. Does it empty into the channel at all?

A. I don't know.

Q. Where did you get your information of where Thompson Creek was?

A. I don't remember; I think I inquired of someone.

Q. The fact is, that you don't know anything about that notice, whether it is within the Harris Mining District or not?

A. Not of my own personal knowledge.

Q. Next I direct your attention to one you have marked as omitted here, Crist Fuhr and S. C. Peterson; date of location, June 12, 1890; filed for record



(Testimony of L. E. Van Winkle.)

on June 23, 1890; Page 23, Book 4; claiming 1,000 inches of water from the second creek on the left-hand side of Taku Inlet above the first Indian village—what made you put that in the Harris Mining District?

A. On the left-hand side of Taku Inlet, undoubtedly it would be in the District according to my idea of the country there.

Q. Why would it be in the District?

A. Because it is on the left-hand side of Taku Inlet.

Q. Which is the left-hand side of Taku Inlet?

A. I figure it would be the west side.

Q. You know the way to calculate a stream, you always look down stream to see where the left or right side of the stream is, don't you?

A. I don't know.

Q. You thought the fellows must have been looking up stream [1672—1522] when they made this notice; is that right?

A. I didn't think that would make any difference which way he was looking.

Q. Isn't it a fact that the left-hand side of a stream is the same side that is on your left hand when you look down stream?

A. I don't know any rule for deciding which is the left side of a stream.

Q. You don't know any rule for it, and you have no information upon the subject, and it said it was on the left-hand side of Taku and you thought it must be in the District—is that right?

(Testimony of L. E. Van Winkle.)

A. That is the only thing that caused me to put it in the District.

Q. That is the only reason?

A. That was the only reason.

Q. Did you have any other reason?

A. There might have been something in the instrument when I was checking it over that would make me think that it was in the District; there were many things that I would see in the instrument that made me decide it was in the District.

Q. Do you know where the Taku Village is?

A. No; I do not.

Q. The next one I direct your attention to as having been marked on this exhibit as being omitted in Mr. Marshall's list and within the Harris Mining District is the location made by John McWilliams, G. W. Stukey, J. B. Harmon and Jesse McWilliams; located June 1st, 1890; filed for record September 23, 1890; claiming 1,000 miner's inches of water from the natural streams flowing from the mountain just above, over and along the located and recorded property of the Ohio lode [1673—1523] claim—why did you put that within the Harris Mining District?

A. I thought the Ohio lode claim was in the Harris Mining District.

Q. What?

A. I thought the Ohio lode claim was in the Harris Mining District.

Q. Did you look up the Ohio lode claim to see where it was recorded?

(Testimony of L. E. Van Winkle.)

A. I didn't go to the record to find out where it was recorded.

Q. How did you know where the Ohio lode claim was if you didn't go to the records?

A. I think the way I arrived at that was finding it mentioned in connection with other locations that I knew to be in the Harris Mining District.

Q. Don't you know that that property is up here on Admiralty Island? A. No; I don't.

Q. And is outside of the District? A. I do not.

Q. You don't know anything about it?

A. I don't believe it is.

Q. Let me ask you what reason you have to say that you don't believe it is?

A. The reason I have given you.

Q. What reason have you given me?

A. My impression is that I have seen the name mentioned in connection with water locations that I knew to be in the Harris Mining District.

Q. You don't know what locations they were?

A. I couldn't say. [1674—1524]

Q. The next notice that I direct your attention to which you have marked as being omitted from Mr. Marshall's exhibit, is Book 4, Page 124, located by Fred Micho; located April 20, 1890; filed and recorded November 6th, 1890; claiming 5,000 inches of water of Ocean Wave Creek—where is Ocean Wave Creek? A. I don't know.

Q. What made you put it in the Harris Mining District if you don't know where it is?

A. There is nothing at all in that notice, as I re-

(Testimony of L. E. Van Winkle.)

member, to indicate it was outside of the Harris Mining District; it is one that I am not certain about.

Q. And when you found one you were uncertain about you put it in the Harris Mining District for good measure?     A. I did not.

Q. Isn't it a fact that that notice located Ocean Wave Creek as being on St. James Bay?

A. I don't think so.

Q. You know that Ocean Wave Creek is on St. James Bay, if you have made any investigation of it?

A. I don't; I don't know anything about St. James Bay.

Q. You don't even know where St. James Bay is?

A. Never saw it in the record.

Q. You would not say now that Mr. Marshall made a mistake in omitting that notice, would you?

A. I would not.

Q. I want you to state whether this notice, you intended that being marked as omitted or not, the one marked A. M. Noyes?     A. That is not marked.

Q. My impression is that you gave it in your enumeration—so your testimony is that the location made by A. M. Noyes, [1675—1525] filed for record June 25, 1891; located May 28, 1891; claiming 100 inches of water in Sheep Creek; place of intended use, Glacier lode claim—that was not omitted?     A. That was not omitted.

Q. If you read it off as omitted it was a mistake in reading it off?     A. Yes; I didn't read it.

Q. I next call your attention to this one, located

(Testimony of L. E. Van Winkle.)

by Frank Bach; filed for record August 4, 1896; dated July 10, 1896; claiming one thousand inches of water of Independent Creek; place of intended use, premises of F. Bach and his co-owners; recorded in Book 5, Page 118—what made you put that in the Harris Mining District?

A. Because I thought Independence Creek was in the Harris Mining District.

Q. Where is it?

A. I think that is on Douglas Island, too.

Q. Douglas Island? A. I think so.

Q. Do you know Independence Creek is in Seward City? A. Might be.

Q. What part of Douglas Island have you put Independence Creek on?

A. I don't know what part.

Q. Do you know where Seward City is?

A. Somewhere in the Berner's Bay District.

Q. About 5 miles north of Comet?

A. I don't know.

Q. And that is where Independence Creek is?

A. Might be that the creeks are duplicated.

Q. Do you know of any other Independent Creek except that one? [1676—1526] A. I do not.

Q. Flows into Independence Lake and into Lynn Canal, don't it? A. I couldn't say.

Q. You don't know anything about that?

A. I don't know anything about that creek there.

Q. You just put that into the Harris Mining District because you didn't know where it was?

A. No; I did not.

(Testimony of L. E. Van Winkle.)

Q. What was the reason you put it in the Harris Mining District?

A. Because I thought it was in the Harris Mining District.

Q. Why?

A. I couldn't give you the reason unless I was going over the records again.

Q. I next call your attention to the notice you have marked as being omitted from Mr. Marshall's list, within the Harris Mining District, Book 5, page 137; the locators are shown here as Donald Fraser, John McWilliams, C. S. Brown and M. E. Olson; dated September 16, 1896; filed for record October 5, 1896; claiming 1,000 inches of water on east branches of Cowee Creek—that is John McWilliams' property, isn't it, at Yankee Basin?

A. I don't know; I don't know his property.

Q. Why did you put it in the Harris Mining District?

A. Because Cowee Creek is in the Harris Mining District.

Q. Because there is a creek called Cowee Creek in the Harris Mining District?      A. Yes, sir.

Q. Don't you know there is another Cowee Creek up at Yankee Basin?

A. There is another Cowee Creek? I don't know where it is.

Q. Is there a branch of the Cowee Creek on Douglas Island? [1677—1527]

A. There are undoubtedly a number of branches.

Q. The notice says, and I think you will remember



(Testimony of L. E. Van Winkle.)

the notice, 4 miles up main stream and 3 miles up the branch—that would be 7 miles from the beach—where would you place that on Douglas Island?

A. I don't know where Cowee Creek runs on Douglas Island.

Q. You know that Douglas Island isn't big enough to have a stream 7 miles from the mouth, don't you?

A. No; I don't.

Q. You know it is a small island, and you know furthermore—did you inquire where John McWilliams and his partners were mining?

A. I made no inquiry about that; no—I don't know anything about that.

Q. Just put it in the Harris Mining District because you heard there was a Cowee Creek on Douglas Island, without ascertaining whether this was the Cowee Creek or not?

A. The records show *it* Cowee Creek on Douglas Island.

Q. And you put this in the Harris Mining District because there is a Cowee Creek on Douglas Island, without investigating whether this is the creek on Douglas Island or where?

A. Yes; because that was probably spelled with a C.

Q. I next call your attention to a notice that you have marked as omitted from Mr. Marshall's list, Book 6, Page 70; the location of Henry Staates; dated October 21, 1898; filed for record October 29th, 1898; claiming 1,500 miner's inches in this stream; place of intended use, Blue Gravel mine at the falls

(Testimony of L. E. Van Winkle.)

of the west bend of McGinnis Creek, Harris Mining District—why did you put McGinnis Creek in the Harris Mining District?

A. Because it said in the notice it was in the Harris Mining [1678—1528] District.

Q. Not because McGinnis Creek was within the Harris Mining District, but because the locator said it was within the Harris Mining District?

A. McGinnis Creek is referred to in a number of places as being in the Harris Mining District.

Q. McGinnis Creek is in the Harris Mining District? A. It is so shown in the Records.

Q. There are notices that come from McGinnis Creek that are marked in the Harris Mining District? A. You have one of them there.

Q. And that is why you surmised that McGinnis Creek was in the Harris Mining District?

A. Yes, sir.

Q. You had no information upon the subject?

A. None other than what the notice gave.

Q. You know that McGinnis Creek is outside the Harris Mining District and is in the Montana Mining District, don't you? A. No, sir.

Q. Didn't you hear Judge Staates' testimony upon that subject? A. No, sir.

Q. You had no information other than that you have given?

A. No, sir; none other than that I got from the records.

Q. What other information have you from the records other than that you have given me?

(Testimony of L. E. Van Winkle.)

A. None at all.

Q. That is why you put it in the Harris Mining District?

A. Because it stated the Harris Mining District.

(Whereupon court adjourned until to-morrow morning at 10 o'clock.) [1679—1529]

MORNING SESSION.

August 14, 1914, 10 A. M.

L. E. VAN WINKLE, on the witness-stand.

Cross-examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. I was asking you last evening in regard to the notice of Henry Staates, appropriating water in McGinnis Creek—you know that McGinnis Creek is not in the Harris Mining District, don't you?

A. No, sir; I do not.

Q. You know now that McGinnis Creek is not in the Harris Mining District, don't you?

A. I think part of McGinnis Creek is in the Harris Mining District.

Q. Do you know what part of McGinnis Creek this notice of Henry Staates was on?

A. No, sir; I don't.

Q. Do you know whether that is in the District or not?

A. I don't believe the point on the creek is given in the notice.

Q. Do you know where the notice was posted?

A. No, sir.

Q. What part of the McGinnis Creek is in the Harris Mining District?

(Testimony of L. E. Van Winkle.)

A. I think the head of it.

Q. How much of the head of it?

A. I couldn't say to that.

Q. Do you know approximately?

A. No; it is pretty hard to tell; I think part of it is in the north part of the Harris Mining District, however; and the [1680—1530] Harris Mining District is designated in the notice itself was the reason I put it in.

Q. Isn't it a fact that was the only thing you went by, that the notice said the Harris Mining District and you put it in? A. Not the only thing.

Q. What map did you find McGinnis Creek being in the Harris Mining District on?

A. I never found any map giving McGinnis Creek; very few of those creeks are named on the map.

Q. Where did you get your information from?

A. From inquiring.

Q. From whom?

A. I don't remember in that particular instance.

Q. You don't remember who you got your information from—all right. The next notice of Henry Staates that you placed in the District, the same testimony applies to that, doesn't it? A. Yes, sir.

Q. There are two notices of Henry Staates?

A. Yes, you referred to the first one last night, and I believe they are the same.

Q. Now, the next notice that you have given here as omitted by Mr. Marshall's list as being in the Harris Mining District, is the notice of James Cannon; recorded on page 132; dated July 25, 1898; filed

(Testimony of L. E. Van Winkle.)

for record December 6, 1898; claiming 800 inches of water of Cannon Creek; situated in the Alaska Mining District—where is that creek?

A. What is that Canyon?

Q. Cannon.

A. Located by a man by the name of Cannon?

[1681—1531]

Q. Yes.

A. I don't know; I think it is on the island.

Q. What island?

A. It is not a well-known creek; probably named for the man himself; I think it is on Douglas Island.

Q. Did you have any knowledge as to where that creek is? A. No personal knowledge.

Q. Have you any knowledge other than personal knowledge?

A. I have inquired of people who have the idea I have, that it is on Douglas Island.

Q. Who told you where that creek was?

A. I don't remember.

Q. Did anybody tell you where it was?

A. Nobody told me definitely.

Q. How definitely did anybody tell you where it was?

A. Just as definitely as I have given you that it is on Douglas Island.

Q. What part of Douglas Island?

A. I don't know.

Q. Don't you know anything more about it—that is the reason you put that in the Harris Mining District? A. Yes, sir.

(Testimony of L. E. Van Winkle.)

Q. The next one we find omitted is recorded in the next volume, Volume 7, page 68; the location of the Last Chance Mining Company, by I. N. Gordon, Superintendent; dated March 18, 1899; filed and recorded March 20, 1899; claiming 500 miner's inches of water from a certain mountain stream coming from the mountain north of Last Chance Basin and flowing into said Basin; place of intended use Last Chance Basin—that one you also found as missing from Mr. Marshall's list, [1682—1532] and seems to be a duplicate—there are two of those notices and one is omitted from Mr. Marshall's list apparently, and that notice that you found was not omitted was dated on March 18th, 1899, and was recorded March 20, 1899, and designated a place of use, did it not?

A. I don't remember, I am sure; I will have to see the list.

Q. Now, the next one we find here as omitted is located by Samuel L. Lovell, by J. B. Phillips, attorney in fact; recorded on Page 245; dated March 30, 1899; filed for record May 5, 1899; claiming 3,000 inches of water of Nugget Creek; place of intended use, Niagara, Townsend and Salem Beach claims—did you look up the location of those claims to find out whether they were in the District?

A. No, sir; I knew the creek to be in the District.

Q. The whole creek, or part of it?

A. Well, I think most of it is in the District.

Q. How large a part of Nugget Creek is in the District?

A. I couldn't say; I didn't follow it out; everybody



(Testimony of L. E. Van Winkle.)

here knows where Nugget Creek is.

Q. And everybody knows there is only a part of it in the Harris Mining District?

A. I am not sure of that; the greater part of it is in the Harris Mining District.

Q. You also know there are Nugget Creeks scattered all over this country, don't you?

A. That flows over their claim.

Q. Did you ever hear of any claims being around here in the vicinity of where this water is to be used?

A. I didn't stop to inquire about the claim.

Q. You didn't stop to inquire about those claims, whether they were inside or outside of the District?

[1683—1533] A. No, sir.

Q. For all you know, this may be Nugget Creek outside of the District? A. It may be; possibly.

Q. You have no information upon the subject except that the creek was named Nugget Creek, and you didn't look up the claim to see where the Nugget Creek was located?

A. No, I didn't; I think there are two Nugget Creeks in this District.

Q. Where is the other one?

A. One up in the Basin and the one around Mendahal.

Q. The next one we come to is the location in Volume 8 of Placers, Page 123; F. W. Bradley, per Charles Tappan; dated May 16, 1901; filed for record June 10, 1901; claiming 60,000 inches of water from Turner Lake at the mouth of Turner Lake; place of intended use, tide water; Taku Inlet—how did you

(Testimony of L. E. Van Winkle.)

conclude that Turner Lake or Turner Creek was in the Harris Mining District?

A. By other notices giving it as near Juneau.

Q. Whenever you found anything as being near Juneau you thought it should be in the Harris Mining District?     A. That it was.

Q. Didn't you ever go fishing in Turner Lake?

A. No, sir.

Q. How long have you been here?

A. A little over a year.

Q. And never heard of Turner Lake as being a famous fishing ground?

A. Yes, sir; I have heard of it.

Q. Don't you know that Turner Lake is above Taku Inlet?     A. No, sir. [1684—1534]

Q. Where did you think it was?

A. On Douglas Island.

Q. You don't know even yet that Turner Lake is outside the Harris Mining District, on the other side of Taku Inlet?     A. I do not.

Q. Whom did you inquire of to get your information about Turner Lake?

A. I never inquired of anyone; I have given you my answer on that and you will find further on other claims, and notices giving it as near Juneau—that is what I relied on.

Q. You don't know anything further about the lake other than that?     A. Nothing more than that.

Q. The next notice, the Southeastern Alaska Mining and Milling Company, recorded on Page 131, claiming 10 cubic inches per second of time of water

(Testimony of L. E. Van Winkle.)

of Quartz Creek, which is the right-hand tributary of McGinnis Creek; place of use, locator's mill site; located June 12, 1901; filed for record July 13, 1901—how did you happen to locate that in the Harris Mining District?

A. Simply for the reason that McGinnis Creek is in the Harris Mining District.

Q. Because some location notice located McGinnis Creek in the Harris Mining District you put this in the Harris Mining District—is that it?

A. I think that was a pretty good reason.

Q. You don't know that this part of McGinnis Creek is outside this District?

A. No, sir; I do not.

Q. You didn't inquire into this?

A. No; the notice showed it. [1685—1535]

Q. There is no map in the records to show where McGinnis Creek is, is there? A. No map.

Q. You have no idea, of your own knowledge, then, as to where this creek is—this Quartz Creek?

A. No personal knowledge.

Q. You just heard of it in the Harris Mining District and you put it in the Harris Mining District, because, in your judgment, you thought it ought to go in? A. I thought it was.

Q. Page 146, we find a water location by R. V. Rowe; located June 30, 1901; filed for record August 13, 1901; claiming the water rights for the Doctor Quartz claim—where is the Doctor Quartz claim?

A. I don't remember what I determined in regard to that.

(Testimony of L. E. Van Winkle.)

Q. Why did you put that notice in the Harris Mining District?

A. I don't remember what caused me to do it; it was something in connection with the records, though.

Q. What information guided you in putting that location in the Harris Mining District?

A. I don't remember that particular one; it is hard to remember every location.

Q. Where did you go to the record to find out where the Doctor Quartz claim was located?

A. I didn't go to the record of the quartz claims; it was almost impossible to locate them from the indexes, and it would take up too much time.

Q. You didn't go through the record, then, to find out where they were?     A. No.

Q. You got no information outside of the water notice on this [1686—1536] Doctor Quartz claim?

A. None except—Mr. Rowe lives here in town, I believe.

Q. Did you go to see him?     A. I did not; no.

Q. Did you ask anybody else about it?

A. No, sir; I did not.

Q. Then the only information you got is that contained in the record?     A. Yes, sir.

Q. Now, the location notice referred to, I will ask you if it doesn't read as follows: "I, the undersigned, claim 5 acres for a mill site; also claim a water right for the Doctor Quartz claim 125 feet north and 700 feet south, and 132 feet on each side from the stake, said stake is on the northeast corner of said Doctor

(Testimony of L. E. Van Winkle.)

Quartz claim and is located in the Juneau Mining District. R. V. Rowe, Locator,"—that is the notice, isn't it?

A. I am not sure; I don't remember the notice; it very likely is.

Q. I will show you the notice—now look at that and see if that is the notice you placed in the Harris Mining District, handing you now the notice referred to—that is the one, isn't it? A. That is it.

Q. What did you find in that notice that indicated to you that it was in the Harris Mining District?

A. Nothing in that particular notice.

Q. Where did you get the information that that was in the Harris Mining District?

A. I couldn't tell you; I gathered information from a number of [1687—1537] locations from other parts of the record other than the notice itself.

Q. What other part of the record did you look at in this connection—did you look up the Doctor Quartz claim?

A. I don't remember; it would be impossible to remember.

Q. You don't remember anything about it—you don't know now why you located that in the Harris Mining District?

A. Nothing more than the reason I have given you.

Q. What reason have you given me?

A. As indicated by other parts of the record.

Q. What other parts?

A. I couldn't recall any other.

Q. That Doctor Quartz claim, why did you call that

(Testimony of L. E. Van Winkle.)

a water notice—it doesn't claim to appropriate any water, does it?      A. I think so.

Q. Isn't it a location of a mill site?

A. It calls for water, don't it?

Q. He says he wants water, but he doesn't say what creek he is going to take it from?

A. It says that in lots of other notices.

Q. Give me one.

A. I cannot name you one; if I had my list I could show you.

Q. Next we come to the location of Mr. Brown and George C. Stanley, recorded on Page 217 of Volume 8; dated March 1st, 1902; filed for record March 13, 1902; claiming all water rights and tributaries of this creek situated 100 yards east of Auk Village—that is not in the Harris Mining District, is it?

A. Yes; I think it is.

Q. How do you know it is in the Harris Mining District?

A. Auk Village is in the District, and it would necessarily [1688—1538] have to be in the District if it was east of Auk Village.

Q. You don't know what the creek is?

A. No; I do not.

Q. Now, we come to the location of Wilfrid R. Morgan, recorded on Page 222 of Volume 8; located March 19, 1902; filed and recorded March 22, 1902; claiming all the water flowing in Turner Lake, which flows in the Taku Inlet about 3 miles northeast of Jaw Point—now, do you know where that creek is?

A. That is another one of those Turner Creeks that



(Testimony of L. E. Van Winkle.)

is shown to be near Juneau—same reason as I gave on the others.

Q. That is the one you located on Douglas Island, isn't it?

A. That is one of them; it is the same creek.

Q. Where does that creek flow from, from Douglas Island into the Taku Inlet, three miles southeast of Jaw Point—what part of Douglas Island could that be on? A. I don't know where Jaw Point is.

Q. Does any creek on Douglas Island flow into Taku Inlet? A. I don't know.

Q. You would have to move the whole island in order to get Turner Creek on Douglas Island and fit this description, wouldn't you?

A. I wouldn't say that.

Q. Douglas Island doesn't touch Taku Inlet, does it? A. No.

Q. Turner Creek, however, you placed in the District without any further investigation—is that right? A. That is the reason I gave you.

Q. You supposed that to be on Douglas Island; we now turn to the location of William Winn, O. F. Des Rocher and H. C. Sanford; recorded on Page 230; dated April 5th, 1902; filed for [1689—1539] record April 8, 1902—that is a location of a cannery site; isn't it? A. Might have been.

Q. Here is the notice I call your attention to: "Take notice that we have this day located this ground for a cannery site, including water right appertaining to said ground, described as follows: 1500 feet along the beach running in a southwesterly direc-

(Testimony of L. E. Van Winkle.)

tion to post No. 2, thence 600 feet in a southerly direction to Post No. 3; thence 1500 feet in a northerly direction to post No. 4; thence 600 feet in a northerly direction to post No. 1; location is at the head of Douglas Island and near what is known as Fritz Cove"—that is the location you call a water location, isn't it?     A. They certainly claim water.

Q. Do you call that a water location?

A. I call it a claim for a water right.

Q. Now, we come to the location made by C. D. Mallory, Page 41, of Book 9—dated June 26, 1903; filed and recorded July 7, 1903; claiming 4000 inches of water per second minute of time of Glacier Creek, the outlet of Glacier Lake at the foot of Eagle Glacier; place of intended use; Heid, Sandstone, Ward, group of quartz mining claims—where did you put Eagle River in the Harris Mining District—what part of the Harris Mining District is that?

A. Somewhere Glacier River is referred to in the records as Eagle River.

Q. You don't know where the Eagle River is—is that your testimony?     A. Not definitely.

Q. You don't know where Eagle River is—you are locating claims with reference to streams and you don't know where Eagle [1690—1540] River is?

A. I have no knowledge—nothing outside of the records—of any of those streams.

Q. Don't you know that Eagle River is one of the largest streams that runs from the inland to Lynn Canal?     A. There might be other Eagle Rivers.

Q. Do you know of another?

(Testimony of L. E. Van Winkle.)

A. As I have told you, Glacier Creek is sometimes referred to in the records as Eagle River.

Q. When and where?

A. I couldn't tell you without making an investigation.

Q. Who ever called the Eagle River Glacier Creek?

A. I couldn't tell you any specific time, but that is a fact.

Q. Could you tell me approximately?

A. No, sir; that would be impossible.

Q. Do you know Mr. Mallory? A. No, sir.

Q. Connected with the Eagle River Mining Company? A. I don't know him.

Q. Do you know where the Heid, Sandstone, Ward group of mining claims is? A. No, sir.

Q. Don't you know that is the group of mines that constitutes the Eagle River mine?

A. I don't know anything about it.

Q. Why did you put that in the Harris Mining District?

A. For the reason I have given you—Glacier Creek is in the Harris Mining District, and sometimes is called Eagle River.

Q. I want to know where that is.

A. I couldn't tell you where that is without an investigation of the records. [1691—1541]

Q. Could you investigate the records at recess and tell me of any place where Glacier Creek is called Eagle River?

(Testimony of L. E. Van Winkle.)

A. I probably could if you would give me time enough.

Q. The next notice is another notice by Mr. Mallory, another notice appropriating one of the tributaries of Eagle River, the one I am now referring to appearing on page 43 of Book 9 of Placers—that is, also in the Eagle River District, and you put that in the Harris Mining District without knowing where Eagle River was? A. For the same reason.

Q. You didn't know where Eagle River was a while back, did you? A. No, sir.

Q. Now, we will go back to another one by Mr. Mallory that appears on page 47—claiming 4,000 miner's inches of water per second minute of time of tributaries or outlet of Glacier Lake situated at the base of Eagle Glacier and emptying into Eagle River,—now, how did you come to put that in the Harris Mining District?

A. Because there is a Glacier Creek in the Harris Mining District.

Q. Do you know where Eagle Glacier is?

A. No, sir.

Q. Do you know where the head of Eagle River is?

A. No; I don't.

Q. You don't know that Eagle Glacier is the head of the Eagle River? A. No, sir.

Q. And you don't know where Eagle River is, and you don't know that that notice is outside of the Harris Mining District? A. No, sir.

Q. Did you ever consult the map to ascertain where Eagle River [1692—1542] was? A. Yes, sir.

(Testimony of L. E. Van Winkle.)

Q. You know that Eagle River is detailed on all the maps of the country, don't you?

A. I never saw it on a map.

Q. Did you ever consult one to see or try to find out where it was? A. Yes.

Q. You know there is a geological map platted with Eagle River on it, don't you?

A. I didn't know that.

Q. The next notice we come to is recorded on page 45, Volume 9 of Placers, another notice by Mr. Mallory, claiming 1,500 inches per minute of time of the water of Sandstone Creek, a tributary of Eagle River—why did you put that in the Harris Mining District? A. For the same reason.

Q. Do you know where Sandstone Creek is?

A. No, sir.

Q. And you don't know where the Eagle River is?

A. Couldn't find Sandstone Creek on the map.

Q. You couldn't find Sandstone Creek and you put it in the Harris Mining District?

A. For the reason that I have given you.

Q. What is that reason?

A. I considered Eagle River the same stream as Glacier Creek.

Q. You considered it the same—where is Glacier Creek?

A. Glacier Creek is in the vicinity of Mendenhal Glacier.

Q. You mean that little creek at Mendenhal Glacier? A. Yes, sir.

Q. Who ever called that Eagle River?

(Testimony of L. E. Van Winkle.)

A. I couldn't tell you who. [1693—1543]

Q. And you don't know where you ever saw it called that. The next one we come to occurs on page 46, another one of Mr. Mallory's notices, claiming 2,000 miner's inches of water per second minute of time from a certain creek flowing through Bear Creek Canyon from underneath Eagle Glacier—now, why did you put that in the Harris Mining District?

A. There is a Bear Creek in the Harris Mining District.

Q. Did you ever make any inquiries of where Eagle Glacier was? A. No, sir.

Q. Isn't that a pretty well known glacier in this country?

A. It might be and it might not be; the map didn't show it.

Q. How long have you been here?

A. About a year.

Q. Where did you live before that?

A. Washington.

Q. Seattle? A. Yes, sir.

Q. You didn't know that Mr. Mallory's Eagle River mines were located up there either, did you?

A. No, sir; I did not.

Q. I don't suppose you ever heard of the Eagle River mines, did you? A. I think I have.

Q. Whoever told you there was such a thing as the Eagle River mines?

A. I don't know; I have heard it mentioned since I have been in Juneau.



(Testimony of L. E. Van Winkle.)

Q. Now, we come to another one of Mr. Mallory's notices, in Volume 9, page 47—this is a location made June 26, 1903; [1694—1544] claiming 4,000 inches of the water of the tributaries and outlet of Glacier Lake, situated at the base of Eagle Glacier and emptying into Eagle River—why did you put that in the Harris Mining District?

A. For the same reason.

Q. Did you ever hear of a Glacier Lake in the Harris Mining District?

A. I think there is a Glacier Lake.

Q. Where?

A. I think it is the vicinity of the little stream.

Q. Vicinity of what little stream?

A. Called Glacier Creek.

Q. Where?

A. Somewhere near Mendenhal, I believe.

Q. Don't you know there isn't a lake up there at all? A. No; I don't know there isn't.

Q. You know that little Glacier Creek flows from Mendenhal Glacier, doesn't it?

A. I think it does.

Q. Now, when the record said it flowed from Eagle Glacier, didn't that convince you it was not the creek that flows from Mendenhal Glacier?

A. I tried to find Eagle Glacier on the map, and it wasn't shown.

Q. What map did you consult?

A. The map in the Commissioner's office.

Q. Is there a map in the Commissioner's office of the District? A. A map of Alaska.

(Testimony of L. E. Van Winkle.)

Q. The map that has the whole Territory of Alaska? [1695—1545] A. Yes.

Q. Did you ever consult one of those little geographies they use and have at schools to find Eagle Glacier? A. I certainly did not.

Q. Well, now, let's see—we come to another one, recorded on Page 123, Volume 9 of Placers—the Mansfield Gold Mining Company; that is designated as being the waters of McGinness Creek—you also put that in the District because you thought McGinnis Creek was in the District? A. Yes, sir.

Q. Did you hear the testimony of Judge Staates, that that isn't in the District? A. No; I did not.

Q. You don't know anything about it except your idea on the subject?

A. Except the indications given in the record.

Q. We now come to the location appearing in Book 10, Page 36, locator, John G. Heid, Peter S. Early and Frank Bach; dated August 1st, 1905; posted August 1st, 1905; filed and recorded October 27, 1905; claiming 5000 inches of water on the south-east fork of Kowee Creek; place of intended use, mill site and power site of Dividend group of lode mining claims—did you put that in the Harris Mining District?

A. Will you tell me how Cowee Creek is spelled here?

Q. It is spelled here—you have it corrected with a K—that notice is the one that was referred to in the courtroom yesterday as designating Yankee Basin as the place where Cowee Creek is.

(Testimony of L. E. Van Winkle.)

A. That might be one of those Cowee Creeks—it is usually spelled with a C when it is on Douglas Island and K when it [1696—1546] is not.

Q. You made a mistake in that one, didn't you?

A. Might have.

Q. You did, didn't you?

A. If there is a correction made there in the letter, I wouldn't say that I am sure about it.

Q. You wouldn't say where the Dividend group of claims is? A. No; I don't know.

Q. That is a pretty well known group of claims, isn't it, Peter Early's mine? A. Not to me.

Q. Do you know where Yankee Basin is?

A. Since I have been on the witness-stand I have gotten an idea where Yankee Basin is; I never knew before.

Q. That designates Cowee Creek as being in the Yankee Basin—you remember that?

A. No; I don't remember that.

Q. Just look at that notice and see if that doesn't designate Cowee Creek as being in the Yankee Basin—Page 36, Book 10?

A. This is Kowee, K-o-w-e-e; usually when it begins with K it is in the Yankee Basin, and this is spelled K-o-w-e-e.

Q. It is in Yankee Basin? A. I think it is.

Q. You made a mistake in that one—if that is right, didn't you? A. Yes, I think that is right.

Q. Now, we come to a location of Stewart Wood, recorded on Page 129 of Volume 10 of Placers, marked by you as being omitted, and being within the

(Testimony of L. E. Van Winkle.)

Harris Mining District, this location was made January 8, 1908; claiming 1000 miner's inches of [1697—1547] water of Glacier Creek, Berner's Bay District, Harris Mining District; place of intended use, Placer Claim No. 1—do you know where the Glacier Creek is in Berner's Bay?

A. No, sir; I don't know that Berner's Bay belongs in there; in the notice itself it says Harris Mining District.

Q. It also says Berner's Bay District, doesn't it?

A. It says Berner's Bay District, and also says a creek that is known to be in this District.

Q. You know there is a Glacier Creek in the Harris Mining District? A. Yes, sir.

Q. Do you know where Mr. Woods is operating?

A. No, sir; I do not.

Q. You don't know he is operating in Berner's Bay?

A. No; nothing in the records to show that.

Q. What information you got about this country you got out of the records—did you look up the placer claims to find out where Placer No. 1 was?

A. No, sir.

Q. Now, where it says Berner's Bay District, Harris Mining District, why didn't you put that in the Berner's Bay District?

A. It didn't say Berner's Bay Mining District; it says there Berner's Bay District, Harris Mining District.

Q. It uses Berner's Bay, doesn't it? A. Yes.

Q. You know Berner's Bay isn't in the Harris

(Testimony of L. E. Van Winkle.)

Mining District? A. Certainly do.

Q. If those mining claims are in the Berner's Bay District, [1698—1548] then they are not in the Harris Mining District?

A. The records show it is in the Harris Mining District.

Q. Doesn't it say Glacier Creek, Berner's Bay first? A. It certainly does.

Q. Well, if it says that the Glacier Creek referred to is the Glacier Creek in Berner's Bay, then it must be in the Berner's Bay District?

A. I had no right to dispute the record in what it says.

Q. You didn't want to dispute the locator?

A. I didn't want to dispute the record.

Q. When the record said that the Glacier Creek was in Berner's Bay District, why did you dispute the record and place it in some other place out of Berner's Bay District?

A. If it said Berner's Bay Mining District, I would have known it was in Berner's Bay Mining District.

Q. But your abstract says Berner's Bay District?

A. Yes, sir.

Q. If the record said Berner's Bay District why did you think it was not in the Berner's Bay District?

A. Because it says the Harris Mining District—it names that as the Mining District.

Q. Now, you have the next notice here, one by J. H. Stephens and Tom Dull, on Page 139 of Volume 10 of Placers—that is in the Montana Creek, and the

(Testimony of L. E. Van Winkle.)

place of intended use Auk Bay—5000 inches of water from creek which empties into Montana Creek—why did you put that in the Harris Mining District?

A. Because that is near Auk Bay.

Q. You know where the Dull and Stephens property is?    A. No, sir. [1699—1549]

Q. You know that isn't in the Harris Mining District, don't you?

A. I don't know anything about their property.

Q. You know where Montana Creek is, don't you?

A. Not definitely.

Q. You don't know that is outside of the Harris Mining District?

A. It might be; this isn't on the Montana Creek.

Q. You know that is in the old Montana Mining District, don't you?

A. I never located that creek.

Q. What is the reason you give me for putting that in the Harris Mining District?

A. Because it is in the vicinity of Auk Bay.

Q. Anything in the vicinity of Auk Bay ought to go in the Harris Mining District?

A. It ought to; yes.

Q. Is it or is it not in the Harris Mining District?

A. I say it is.

Q. Do you know what side of the bay the Auk Village is on?

A. I think it is on the west side.

Q. Well, that is the place of intended use, Auk Bay—that isn't where the creek is situated?

A. I don't remember that notice well enough to tell you that.



(Testimony of L. E. Van Winkle.)

Q. The notice says—your abstract says—it is a creek which empties into Montana Creek—you know that Montana Creek is not in the Harris Mining District, don't you? A. No; I don't, it might be.

Q. You don't. The next one we find is the location of Stephens and Dull from a creek that empties into Auk Bay—that same reason which you gave for the last one, I suppose, applies to this one. [1700—1550] A. Yes, sir.

Q. The next one we come to is the notice of Robert A. Kinzie, found in Volume 10, Page 141, claiming 50,000 inches of water of Twin Creek, near Juneau—why did you put that in the Harris Mining District?

A. Because it was near Juneau.

Q. Don't you know where Twin Creek is?

A. No, sir; I do not.

Q. You don't know the place of *intended* shows the Taku Inlet,—would that give you any information?

A. Taku Inlet is one of the boundaries of the District.

Q. Do you know that Twin Creek is on the other side of Taku Inlet?

A. I don't know; it wouldn't be recorded as being near Juneau if it were.

Q. Where did you think Twin Creek was?

A. I thought it was on this side of Taku Inlet.

Q. Where on this side of Taku Inlet did you place it?

A. I didn't place it; I suppose it was near Juneau when it said near Juneau; I didn't think it was 30 miles away.

(Testimony of L. E. Van Winkle.)

Q. Do you know it is 30 miles away?

A. I think it is quite a distance.

Q. And you made no further investigation to find out where Twin Creek was?     A. I did not.

Q. We now come to another location by Robert A. Kinzie, which occurs at Page 141—this claims 100,000 miner's inches of water of Lake Turner, near Juneau—do you know where Lake Turner is?

A. No, sir.

Q. You don't know where Lake Turner is—if you don't know [1701—1551] where it is why did you put it in the Harris Mining District?

A. For the same reason I did the other one, being near Juneau.

Q. You made no inquiry as to where Lake Turner was?

A. No, sir; nothing outside of the records.

Q. What did you find in the record on that subject?

A. I found it was near Juneau, and it couldn't be very near Juneau and be outside of the District.

Q. You never looked at a map to see where Turner Lake was?     A. Yes, sir.

Q. What map did you look at?

A. The map in the Commissioner's office.

Q. Why didn't you look in one of the geological reports and find out where these things were?

A. I didn't have such a map.

Q. Here is another notice by Robert A. Kinzie, same book, Page 144, appropriating 10,000 miner's inches of water of Kar Creek, near Juneau—why did

(Testimony of L. E. Van Winkle.)

you put that in the Harris Mining District?

A. For the same reason.

Q. Because you thought Kar Creek must be near Juneau? A. Yes, sir.

Q. Didn't make any inquiries to know where Kar Creek was? A. Yes, sir.

Q. You know that is on the other side of Taku Inlet, don't you? A. No, sir.

Q. And flows into Turner Lake?

A. The records don't show it.

Q. And you never made any inquiry from anybody as to where Kar Lake was? [1702—1552]

A. No, sir.

Q. Just put it in as omitted by Mr. Marshall without making any further inquiries—is that right?

A. No; I made no inquiry outside of the record.

Q. Here we have got another location notice by John Clark, omitted by Mr. Marshall, and marked within the Harris Mining District—Volume 10, Page 156; location made on July 21, 1909, claiming 30,000 miner's inches of water on the south fork of Eagle River—why did you put that in the Harris Mining District?

A. Well, for the same reason I gave in regard to Glacier Creek being sometimes called Eagle River, and not knowing of any Eagle River.

Q. You don't know of this large river that flows in the vicinity of the Eagle River mines?

A. There might be other Eagle Rivers.

Q. What other Eagle Rivers are there that you know of?

(Testimony of L. E. Van Winkle.)

A. I have told you that Glacier Creek is sometimes called Eagle River.

Q. I think you already told me when you answered me before, that you couldn't tell where you had seen it called Glacier Creek?

A. I couldn't without investigating all the books.

Q. And that is merely a recollection of yours?

A. It is an opinion formed from the records.

Q. We now come to another location notice which you have marked as being omitted by Mr. Marshall, the location notice of C. F. Stites by John W. Clark, Page 157 of Volume 10 of Placers; 2,000 inches of water of Granite Creek—did you look up to see what Granite Creek that was?

A. I never heard of but one Granite Creek.  
[1703—1553]

Q. Never heard of the Granite Creek in the vicinity of Sumdum where Mr. Clark was operating?

A. No, sir.

Q. Did you look up to find out where Mr. Clark's claims were located?      A. No, sir.

Q. Didn't try to find out where he was operating at all?      A. I did not.

Q. Or make any inquiry on that subject—in looking at the records on Page 157 you found there, did you not, that he located 2,000 miner's inches up on Granite Creek, situated within one mile of Eureka Quarry No. 2, also 5 acres of nonmineral land for a power-house—you saw that, didn't you?

A. I don't remember that now; probably did.

Q. Look at that record a minute—this is the same

(Testimony of L. E. Van Winkle.)

one I was reading you from the records of the Juneau Recording District? A. Yes.

Q. Now, look just above that on the same page, and you find a location of the quarry, don't you?

A. Yes, sir.

Q. You never took the trouble to look at that?

A. I naturally wouldn't look for that.

Q. Now, look at that and see if that gives you any location as to where Granite Creek is?

A. I could locate the quarry.

Q. Where is it located? A. Sumdum.

Q. That is not in the Harris Mining District, then?

A. No, sir; Sumdum is not in the Harris Mining District. [1704—1554]

Q. The Granite Creek that was located by that notice was the Granite Creek at Sumdum, but not the creek in the Harris Mining District—that is right, isn't it? A. I wouldn't say that.

Q. Look at this notice again and satisfy yourself and then say where Granite Creek is.

A. I couldn't say; there might be another Eureka Quarry.

Q. That is the Eureka Quarry, however, located by Mr. Stites for Mr. Clark?

A. The same number.

Q. The same name, isn't it? A. Yes.

Q. The same date of location and the same locators and the same names, isn't it—is that right?

A. Yes; the same locators.

Q. And the same name of the quarry? The

(Testimony of L. E. Van Winkle.)

quarry is located in Sundum—that is right, isn't it?

A. Yes, sir; that one is.

Q. Now, unless there is another Eureka Quarry located by these same people you have made a mistake in that notice, haven't you?      A. Yes, sir.

Q. Now, the location of Mr. Maycock, recorded on Page 193, claiming all the water flowing in Grindstone Creek near point where Taku Arm and Gastineau Channel intersect—located on January 6, 1911; and this notice reads as follows: "Notice is hereby given that I claim 20 acres of ground for placer purposes, running as follows: 1500 feet in a northerly direction from and 300 feet on each side of this notice, together with all the water flowing in Grindstone Creek. This claim is situated 1500 feet north of [1705—1555] Grindstone Creek, about 2 miles west of Point Bishop and 2 miles east of a point of land where Taku Arm and Gastineau Channel intersect. In the Gastineau Mining District, District of Alaska, and shall be known as the Tonopah placer claim," and it is designated on top as a placer location—that is the notice you refer to, isn't it?      A. It probably is.

Q. Is that the one you referred to—I am now showing you that notice of Mr. Maycock's—and ask you if that is the one you referred to as being omitted, the one I have just read?

A. What page have I there, 193?

Q. 193, that is the page given.

A. Yes; that is the same notice.



(Testimony of L. E. Van Winkle.)

Q. That is designated "Notice of Placer Location"? A. Yes.

Q. And designate the matters and things I have read? A. Yes.

Q. I now call your attention to another notice occurring on Page 193, of the same book of records, made by Mr. Maycock, entitled "Notice of Location of Placer Claim: Notice is hereby given that I claim 20 acres of ground for placer purposes, running as follows: 1500 feet in a northerly direction from and 300 feet on each side of this notice, together with all the water flowing in Grindstone Creek. This claim is situated at the north of Grindstone Creek about 2 miles west of Point Bishop, and 2 miles east of a point of land where Taku Arm and Gastineau Channel intersect, in the — Mining District, Juneau Recording District, District of Alaska, and what is known as the Mono placer claim. Located the 6th day of January, 1911." [1706—1556] You didn't put that in your list, did you?

A. I don't think I did.

Q. Why did you leave that one out?

A. It looked to me like a repetition; I didn't see any difference in it at all, recorded at the same minute.

Q. You didn't put that in because you thought he located the same thing twice?

A. It looks like it was recorded twice to me; it is the same minute, both recording dates.

Q. And you thought that the recorder had made a mistake and you thought you would correct it?

(Testimony of L. E. Van Winkle.)

A. I didn't think I would correct it; I thought it was a mistake on the part of the recorder, though.

Q. You thought you would leave it out on account of that?

A. No use putting it in twice.

Q. This location of Harry Lott at Sheep Creek, that occurs on Page 26 of Book 11—that is a notice that is designated as a location of a placer claim too, isn't it?

A. I couldn't say unless I saw the records.

Q. Look at that; isn't the notice I show you now from the Juneau Recording District?

A. Yes, sir.

Q. That is the notice?

A. I find it here above, but the location of the placer claim was put on by the recorder and I paid no attention to those—that is a water right location.

Q. That is a water right location and not a placer location?      A. It is both.

Q. How do you know that is put on by the recorder?

A. I couldn't say it was, but in going over the records it [1707—1557] appears that the recorder put that on.

Q. I will read this in evidence in connection with your cross-examination: "Notice of Location of Placer Claims. District of Alaska, Harris Mining District. This claim is known as the Lucky Chance Placer Claim. Notice is hereby given that the undersigned having complied with the requirements of Chapter 6, Title 32 of the Revised Statutes of the

(Testimony of L. E. Van Winkle.)

United States, and local customs, laws and regulations, has located 20 acres of placer ground situated in the upper basin of Sheep Creek, and joining on to the west side line of the Regan group of quartz claims. This claim is to be known as the Lucky Chance Placer Claim. Commencing at the initial post upon which this location is posted, which is the southwesterly post, thence running 600 feet in a northeasterly direction to stake No. 2; thence running 1,500 feet in a southeasterly direction to stake No. 3; thence running southwesterly 600 feet to stake No. 4; thence running northwesterly 1,500 feet to the initial stake; also claims 2,000 miner's inches of water for mining purposes. Dated August 12, A. D., 1911. Located August 12, A. D. 1911. R. P. Nelson, locator." You put that in as a water location because it contained this location, "Also claims 2,000 miner's inches of water for mining purposes"?

A. Yes; and you will find claims of that kind in Mr. Marshall's list just the same.

Q. Can you tell me whether the 2,000 inches of water claimed by that notice is in the Harris Mining District or whether it is outside the Harris Mining District—it doesn't say from what stream it is to be taken? [1708—1558]

A. No; it don't give the name of the creek, but it does give the District, I think that is in Sheep Creek Basin.

Q. I next call your attention to the notice you have marked as omitted, the notice of W. R. Nelson, Book 11, Page 191, claiming 500 cubic feet per sec-

(Testimony of L. E. Van Winkle.)

ond of water of Davies Creek; place of intended use, Franklin group of claims—do you know where Davies Creek is?   A. No; I do not.

Q. You know it is up in Berner's Bay, don't you?  
A. No.

Q. Do you know where Echo Cove is?  
A. I am not certain about Echo Cove.

Q. The notice gives this Davies Creek as being near Echo Cove, doesn't it?

A. I always thought Echo Cove was up around the head of Douglas Island; I am not sure about that.

Q. Don't you know that Davies Creek is up in Berner's Bay?   A. No, I don't.

Q. Where in the Harris Mining District did you put Davies Creek?   A. I couldn't say.

Q. You don't know anything about that?  
A. That is one that I am doubtful about.

Q. Do you know where the Franklin group of claims is?   A. No, sir.

Q. Don't you know that is in the Davies group up at Berner's Bay?

A. There is nothing to indicate that it is outside of the District.

Q. You didn't look up to see whether this placer claim was located to be used—I now call your attention to Page 191 of the records of the Juneau Recording District that has the notice to which you referred, the second one on that page? [1709—1559]

A. Yes; that is the notice.

Q. Now, read the next notice on that same page—

(Testimony of L. E. Van Winkle.)

isn't that the claim to which he refers, the Franklin claim—the Franklin group—doesn't this notice refer to the Davies Creek as being in Berner's Bay?

A. It says it is near Echo Cove.

Q. It says Berner's Bay, too, doesn't it?

A. Says the placer claim is in Berner's Bay.

Q. And the placer claim is located on Davies Creek, isn't it?

A. About a mile and a half on up Davies Creek.

Q. And this is a location on this creek; you have now given Davies Creek as being located in Berner's Bay, haven't you? A. It looks like it.

Q. That is an oversight that you made in putting Davies Creek in the wrong locality, that is right, isn't it?

A. I made no examination of other records in that case.

Q. But having gone into the examination of other records now, you say that Davies Creek is in the Berner's Bay District? A. I think it is.

Q. I now call you attention to the notice you have indexed as being in Volume 11, Page 254, location made by E. P. Pond, on May 6th, 1914, claiming 175,000 miner's inches or all of the water of Turner Lake and Turner Creek—that is the same old Turner Lake, isn't it? A. Yes, sir.

Q. You know now that is not in the Harris Mining District, don't you?

A. No, sir; I haven't been shown that it is not.

Q. You still think that Turner Lake is in the Harris Mining District?

(Testimony of L. E. Van Winkle.)

A. I don't know that it is not—I haven't any evidence that [1710—1560] it isn't.

Q. The fact is you don't know anything about its whereabouts, isn't that right?

A. The only thing I went by is the records, because it said it was near Juneau.

Q. And because it said it was near Juneau you put it in anyway, and that applies to Mr. Pond's location the same as those others?

A. Just the same.

Q. I now call your attention to another phase of this exhibit, Mr. Van Winkle; I find here on Marshall's exhibit a location made by the Alaska-Juneau Company on Carlson Creek, dated February 10th, 1913; filed for record February 28, 1913. Book 11 of Placers, Page 139—you marked that as being outside of the Harris Mining District—why did you do that? A. I thought it was outside.

Q. Don't you know that Carlson Creek is just on the other side of Sheep Creek?

A. I have found out since that I was wrong about that.

Q. Mr. Marshall was right in putting that in the District then? A. Yes, sir.

Q. Here is another notice of G. C. Winn on Carlson Creek, that Mr. Marshall has recorded on October 2, 1912; Book 11, Page 99—you have made the same mistake in that for the same reason?

A. Yes.

Q. You admit now that Mr. Marshall was right in this one? A. Yes, sir.



(Testimony of L. E. Van Winkle.)

Q. Another location of John W. Clark, on Carlson Creek, made October 8, 1911, recorded in Book 11 of Placers at Page 23—you will admit that is wrong for the same reason? [1711—1561]

A. The same admission.

Q. Mr. Marshall was right about that one and you were mistaken? Now, Mr. Van Winkle, examining you a little further about this matter of grouping this place of intended use, in some of these you have grouped them as designating a specific place of intended use—what do you mean by that?

A. Where it names a mill or a lode or it gives the name or feet from a given point—something that is very definite.

Q. Where it is very specific? A. Yes, sir.

Q. Such as a line run out by a surveyor, is that what you mean? A. Yes, or a well known point.

Q. What do you mean by general place of use—what do you mean by that?

A. That refers to where the water is to be used on a number of claims, or where it would not be possible to find the exact point.

Q. That is what you mean by that, general place of use? A. Yes, sir.

Q. I now call your attention to the notice made by H. T. Tripp, as recorded October 25, 1910, occurring in Book 10 of Placers at Page 186—what class did you put that in?

A. I don't remember the location.

Q. Don't remember that notice at all—don't you remember that notice says that the waters are to be

(Testimony of L. E. Van Winkle.)

used on the Ebner Mining properties or beyond the same, or something to that effect?

A. Ebner mine is what I have; thought it was quite definite.

Q. You know that Tripp notice, don't you—you know which one I mean, don't you?

A. I don't remember the language any more than is taken off there. [1712—1562]

Q. You don't know whether that is the notice upon which the issues in this case are based?

A. I don't know anything about it.

Q. You have never talked to Judge Winn or anybody else about that?      A. No, sir; I have not.

Q. I call your attention now to the notice of location of water offered in evidence and received in this case, Defendant's Exhibit "C," reading as follows, the part relating to the place of use: "To be conveyed by ditch, flume or pipe along the bank of Gold Creek on the southerly side, or to cross the creek with pipe, flume or both to any place on the property known as the Ebner mine, to carry across or farther than the limits of the said mine property"—where did you locate that—as a definite place of use?

A. I call a mine quite definite.

Q. Where did you put that notice, as giving a place of specific use—definite place of use?

A. Yes, because it said it was to be used in a mine; if it said mines it would not be quite so definite.

Q. When it says on the mine or some place else, that is a definite place of use?

A. It gives one definite point of use, I think.

(Testimony of L. E. Van Winkle.)

Q. That would be the Ebner mine?

A. The Ebner mine.

Q. Now, I call your attention to the next notice, posted by the Alaska-Juneau Gold Mining Company—first I will call your attention to the notice made by George Bent, on August 15, 1910, claiming 1,000 inches of the water of the streams flowing into Gold Creek, at a point about one and one-third miles from the mouth thereof, in Book 10, Page 180; this notice reads as [1713—1563] follows: “Notice is hereby given that George E. Bent, claims under this notice of location 1000 miner’s inches of water of this stream or creek, to be taken, conveyed, carried or conducted by ditch, pipe or flume line, and to be appropriated and used for mining and milling purposes and in the reduction and treatment of mineral-bearing rock and ores or gravel and for other beneficial and useful purposes. Said George E. Bent also hereby declares this as a legal notice to all the world, that he claims 1000 miner’s inches of water of said stream or creek to be conveyed by ditch, flume or pipe-line as aforesaid, with the exclusive right to said ditch, flume or pipe-line, commencing at the point of diversion on said stream or creek and to be conveyed, carried and conducted by flume, ditch or pipe-line to be used for mining purposes and in the reduction and treatment of mineral-bearing rock and ore by milling or otherwise, and for other beneficial and useful purposes. Said stream or creek from which the water claimed herein is to be taken is a said stream or creek flowing into Gold Creek, in the Harris Mining Dis-

(Testimony of L. E. Van Winkle.)

trict, District of Alaska, at a point on said Gold Creek about one and one-third miles from the mouth of said Gold Creek on the southeast side of said Gold Creek”—Now, you have heard me read that notice of George Bent, would you put that in the category of stating a place of use or not? A. I think I would.

Q. I now call your attention to the location made by John R. Winn, as agent for the Ebner Gold Mining Company, locator; located August 17, 1910, recorded on Page 181 of Book 10 of the records—you stated that that also states a place of use? [1714—1564]

A. I couldn't tell you unless you give me the language.

Q. I don't want to read this whole notice into the record, so I will hand you the notice.

A. I would call that a general place, mines.

Q. I call your attention to Page 181 of the record and ask you to read that part of the notice which indicates to your mind general, specific or any other place of use in that notice—that is the Winn notice, isn't it, the one we are talking about?

A. Yes, what did you want me to do?

Q. I want you to read into the *read* the part of the notice that indicates the place of use.

A. “To be conveyed by ditch, flume or pipe or in any other practical or convenient way from said creek and creek bed and to be used in the working, mining and development of the mines owned by said Ebner Gold Mining Company.”

Q. That was not the place of use, was it?

(Testimony of L. E. Van Winkle.)

A. Yes, sir.

Q. That is all there is in that notice that indicates the place of use?

A. I don't know how many mines they have.

Q. To what point is it to be conveyed, does it say?

A. It says the mines.

Q. Conveyed to the mines?

A. Development of the mines owned by the Ebner Company.

Q. It don't say where it is to be used, does it?

A. No, sir; it does not.

Q. It says how it is to be used, but not where?

A. It doesn't give a definite point. [1715—1565]

Q. Does it give any point at all?

A. I wouldn't say it did.

Q. I now call your attention to the location notice made by the Alaska-Juneau Company, by R. A. Kinzie, Agent, which is in evidence in this case, and recorded on Page 195 of Book 10, of the records of the Juneau Recording District—that is marked by you as giving a general place of use—it is that character of notices that you have designated under that head—is that right—it is marked A—A means general, doesn't it? A. Yes, sir; A means general.

Q. And it is that class of notices that you have marked as having a general place of use?

A. Yes, sir; I call that general.

Q. That character of notices you put in as giving the general place of use—is that right?

A. Yes, sir.

Q. That is a good sample of it?

(Testimony of L. E. Van Winkle.)

A. That is not as good as some of them.

Q. I call your attention now to a notice appearing on Page 41, Book 11,—look at that notice?

A. Yes, sir.

Q. That is a notice made by the Alaska-Juneau Gold Mining Company, by Robert A. Kinzie—that is another notice that you indicate as one having a general place of use—that is right?

A. If I have marked it there that way, I did.

Q. And you have indicated that on your exhibit here, place of intended use, Alaska-Juneau Gold Mining Company's property—that is as near as you abstracted this notice, isn't it?

A. That is as near as I could abstract that one.

Q. And in abstracting this notice and giving the place of use, [1716—1566] you haven't given any closer place of use in the other notice than you have in this one, have you?     A. Probably not.

Q. You don't pretend that the abstracting you have done in the way of giving the intended place of use, is definite, do you—that is a notice that you would indicate as having a general place of use—is that right?

A. Yes; I would call that general.

Q. That is what you call general?     A. Yes, sir.

Q. And you have so indicated it on exhibit "R-2"?

A. Yes, sir.

Q. You have, also, in your exhibit marked "R-2," given the following language: "Place of intended use, Alaska-Juneau Gold Mining Company's property"—that is as near as you have abstracted that



(Testimony of L. E. Van Winkle.)

place of use—is that right? A. Yes, sir.

Q. That is about the way you have placed the use in other notices? A. Just a brief abstract.

Q. And the abstract that you have given bears the same relation to other notices in other cases as it does in this case? A. I think so.

Mr. HELLENTHAL.—I now offer in evidence this notice from the Juneau Recording District, Book 11, Page 41:

(Whereupon said location notice was read into the record as follows: “Amended notice of appropriation of water. Notice is hereby given, that, whereas, the Alaska-Juneau Gold Mining Company, a corporation, did on the 5th day of November, 1911, locate, claim and appropriate 20,000 miner’s inches of the water flowing through what is known as the Nowell hydraulic pit, [1717—1567] in Silver Bow Basin, District of Alaska, which said Silver Bow Basin is situated about four miles up Gold Creek from the Town of Juneau; and, whereas, the said Alaska-Juneau Gold Mining Company, did, on the last mentioned date, duly post notice of such appropriation of water at or near the intended point of diversion, and did thereafter within the time required, duly cause the said notice to be recorded with the recorder of the Juneau recording district, the said being the recording district within which the said Silver Bow Basin is situated; and, whereas, the said Alaska-Juneau Gold Mining Company is desirous of amending its said notice so posted and recorded, so as to more particularly describe some of the mat-

(Testimony of L. E. Van Winkle.)

ters and things in the notice referred to. The said Alaska-Juneau Gold Mining Company does now without waiving or surrendering any rights to the use of the waters appropriated by virtue of the notice above referred to, whether the rights were acquired by virtue of said notice, or otherwise, give notice that it has located and appropriated and claimed the right to use 20,000 miner's inches, measured under a 6-inch pressure, of the waters flowing through what is known as the Nowell hydraulic pit, situated about four miles up Gold Creek, from the Town of Juneau in what is known as Silver Bow Basin, the same being in the Juneau Recording District, District of Alaska. The waters so claimed, located and appropriated are to be diverted from their natural channel, at or near a point where this notice is posted, the same being a point from which the northwest corner of the Morris G lode, U. S. Survey No. 97, as it is found upon the ground, bears North 20° West 125 feet distant, said Morris G lode claim being situated in the Silver Bow Basin above [1718—1568] described. From this intended point of diversion said waters are to be conveyed by means of pipe, flumes, and ditches across a portion of said Nowell hydraulic pit, and along the hillside, a total distance of 500 feet, more or less, to a point on the property of the Alaska-Juneau Gold Mining Company, marked by a 4x4 stake inscribed 'Top of Upraise' set in a monument of stone, which point bears South 5° East 270 feet from the south-east corner of the Alaska-Juneau stone compressor

(Testimony of L. E. Van Winkle.)

building. A tunnel which is now being driven by the Alaska-Juneau Gold Mining Company, the portal of which is situated on the Colorado lode mining claim, near what is known as Snow Slide Gulch, is to be extended until it reaches a point immediately beneath the point above referred to, as being marked with a 4x4 post set in a monument of stone, from which the southeast corner of the Alaska-Juneau stone compressor building bears North 5° West 270 feet. This tunnel when so completed is to be connected with said last mentioned point by means of an upraise, and the waters appropriated and claimed as aforesaid, are to be conveyed from the collar of said upraise, where the same are to be applied for the purpose of driving a compressor plant to be installed, and also for the purpose of washing ores in the mine of the Alaska-Juneau Gold Mining Company.

After the waters have been so applied in connection with the driving of said compressor plant, the washing of ores and such other purposes as may be necessary in connection with the mining of the ores in the said Alaska-Juneau mines, the same are again to be caught up and conveyed by the means of pipes, flumes and ditches to the tunnel above referred to, [1719—1569] which is now being diligently driven from the portal on the Colorado Claim, to its terminus at the bottom of the proposed upraise, above referred to, and which tunnel is being driven so as to be of sufficient size to make it available for use as a conduit for said water, in connection with the other

(Testimony of L. E. Van Winkle.)

uses to which said tunnel is to be applied, and it, together with said upraise, are being constructed in the manner above indicated for the purpose, among others, of furnishing an opportunity to convey said water into and through the same in such a manner as to furnish a head of approximately 1000 feet at the bottom of the upraise where the waters are to be applied, as above stated, in order that the waters claimed, located and appropriated may be used and applied to the best possible advantage.

From the portal of said tunnel, the waters are to be conveyed by means of pipes, flumes and ditches along the hillside, lying above Jualpa Basin, on the right-hand side going upstream along the present flume grade of the Alaska-Juneau Gold Mining Company, to a point on Gastineau Channel, a short distance below what is known as the Jorgenson Sawmill, where said waters are again to be applied for the purpose of furnishing power and for other uses in connection with the operation of a stamp mill or mills, to be constructed there.

Posted on the ground at the above described intended point of diversion this 15th day of December, 1911, Alaska-Juneau Gold Mining Company, by Robert A. Kinzie, its Agent and General Superintendent. Witnesses: Patrick Callagy and George Boles.

District of Alaska, Juneau, ss. The within instrument was filed for record at 4 o'clock P. M., December 16, 1911, and duly recorded in Book 11, of Placers of Page 41 of the [1720—1570] of the

(Testimony of L. E. Van Winkle.)

records of said district. G. C. Winn, District Recorder.”)

Q. I now call your attention to another location made by the Alaska-Juneau Gold Mining Company by Robert A. Kinzie; that indicated the place of use, the Alaska-Juneau Gold Mining Company’s property, it being a notice recorded on Page 47 of Volume 11 of the records of the Juneau Recording District—you have also included that on your exhibit, have you not, as giving a general place of use?

A. Yes, sir.

Q. Have put that in the same category?

A. Yes, sir.

Mr. HELLENTHAL.—I offer that notice in evidence.

(Whereupon said notice was read into the record as follows: “Amended notice of appropriation of water. Notice is hereby given, that whereas, the Alaska—Juneau Gold Mining Company, a corporation, did on the 5th day of November, 1911, locate, claim and appropriate 20,000 miner’s inches of the water flowing through what is known as the Nowell hydraulic pit, in Silver Bow Basin, District of Alaska, which said Silver Bow Basin is situated about four miles up Gold Creek from the Town of Juneau, and,

Whereas, the said Alaska-Juneau Gold Mining Company did, on the said last mentioned date, duly post notice of such appropriation of water at or near the intended point of diversion, and did thereafter within the time required, duly cause the said notice to be recorded with the recorder of the Juneau Re-



(Testimony of L. E. Van Winkle.)

cording District, the same being the recording district within which the Silver Bow Basin is situated; and,

Whereas, the said Alaska-Juneau Gold Mining Company [1721—1571] is desirous of amending its said notice so posted and recorded, so it can more particularly describe some of the matters and things in the notice referred to.

The said Alaska-Juneau Gold Mining Company does now, without waiving or surrendering any rights to the use of the waters appropriated by virtue of the notice above referred to, whether the rights were acquired by virtue of said notice or otherwise, give notice that it has located and appropriated and claims the right to the use of 20,000 inches measured under a 6-inch pressure, of the waters that flow through what is known as the Nowell hydraulic pit, situated about four miles up Gold Creek, from the Town of Juneau, in what is known as Silver Bow Basin, the same being in the Juneau Recording District, District of Alaska.

The waters so claimed, located and appropriated are to be diverted from their natural channel at or near a point where this notice is posted, the same being a point from which the northwest corner of the Morris G Lode, U. S. Survey No. 97, as it is found upon the ground, bears North 20° West 125 feet distant; said Morris G Lode Claim being situated in the Silver Bow Basin above described.

From this intended point of diversion said waters are to be conveyed by means of pipe, flumes and



(Testimony of L. E. Van Winkle.)

ditches across a portion of said Nowell hydraulic pit, and along the hillside, a total distance of 500 feet, more or less, to a point on the property of the Alaska-Juneau Gold Mining Company, marked by a 4x4 stake and inscribed "Top of upraise," set in a monument of stone, which point bears S. 5° E. 270 feet from the southeast corner of the Alaska-Juneau stone compressor building. [1722—1572]

A tunnel which is now being driven by the Alaska-Juneau Gold Mining Company, the portal of which is situated on the Colorado lode mining claim, near what is known as Snow Slide gulch, is to be extended until it reaches the point immediately beneath the point above referred to, as being marked with a 4x4 post, set in a monument of stone, from which the southeast corner of the Alaska-Juneau stone compressor building bears N. 5° W. 270 feet. This tunnel when so completed is to be connected with the last mentioned point by means of an upraise, and the waters appropriated and claimed as the afore-said, are to be conveyed from the collar of the said upraise by means of a pipe or pipe-line, to the bottom of said upraise where the same is to be applied for the purpose of driving a compressor plant to be installed, and also for the purpose of washing ores in the mines of the Alaska-Juneau Gold Mining Company.

After the waters have been so applied in connection with said compressor plant, the washing of ores and such other purposes as may be necessary in connection with the mining of the ores in the said

(Testimony of L. E. Van Winkle.)

Alaska-Juneau mine, the same are again to be caught up and conveyed by means of pipe, flumes and ditches through the tunnel above referred to, which is now being diligently driven from a portal on the Colorado claim, to its terminus at the bottom of the proposed upraise, above referred to, and which tunnel is being driven so as to be of sufficient size to make it available for use as a conduit for said water, in connection with the other uses to which said tunnel is to be applied, and it together with the said upraise, are being constructed in [1723—1573] the manner above indicated for the purpose, among others, of furnishing an opportunity to convey said waters up to and through the same in such a manner as to furnish a head of approximately 1000 feet at the bottom of the upraise where the waters are to be applied, as above stated, in order that the waters claimed, located and appropriated may be used and applied to the best possible advantage.

From the portal of said tunnel, the waters are to be conveyed by pipe, flumes and ditches along the hillside, lying above the Jualpa Basin, on the right-hand side going upstream along the present flume grade of the Alaska-Juneau Gold Mining Company, to a point on Gastineau Channel, a short distance below what is known as the Jorgenson Sawmill, where said waters are again to be applied for the purpose of furnishing power and for other uses in connection with the operation of a stamp mill or mills to be there constructed.

Posted on the ground at the above-described in-

(Testimony of L. E. Van Winkle.)

tended point of diversion this 16th day of January, 1912.

The Alaska-Juneau Gold Mining Company, by Robert A. Kinzie, its Agent and General Superintendent.

District of Alaska, Juneau, ss. The within instrument was filed for record at 4 o'clock P. M., January 17th, 1912, and duly recorded in Book 11 of Placers, on Page 47 of the records of said District. G. C. Winn, District Recorder.'')

Q. That illustrates in a general way what you mean by a general place of use?

A. That last one, I couldn't say.

Q. You haven't seen the last one?

A. I have seen it—the other one it does.

Q. You went over it at the time you made up your exhibit, didn't you, to ascertain whether it was general or specific? [1724—1574]

A. I probably did.

Q. And you indicated it as being a general place of use—that is right, isn't it? A. Yes, sir.

Q. Calling your attention now to exhibit "R-2" plus, those are the locations that you found in the Lode Books that are not given in the Water Right Books—that is right, isn't it?

A. Yes; that is right.

Q. I call your attention now to the first location you have there as a water location notice, which is the same notice as appears on Page 121 of Book 2 of Lodes in the Juneau District, which I am now handing you? A. Yes, sir.

(Testimony of L. E. Van Winkle.)

Q. That is a short notice—just read that into the record.

A. “I, the undersigned, claim three miles of this stream or river (Taku River) for the purpose of fishing for and catching salmon or other fish described as follows, commencing at this notice, placed on a spruce tree standing on a point of rock, and thence running down the stream to a rocky point on the left-hand side coming down the stream and on the right-hand going down to a large sand flat. Charles Brown, December 2, 1882.”

Q. That is one of the notices that Mr. Marshall omitted, that you have just read?     A. Yes, sir.

Q. That is one of the water location notices that Mr. Marshall has omitted, according to your judgment?     A. I don't find it on his list.

Q. You considered that notice that you have just read into the record a water notice?     [1725—1575]

A. Yes, sir.

Q. I suppose that is on the theory that fish swim in the water. Calling your attention now to the notice occurring on Page 203 of this Volume 2 of Lodes, the one that you have indicated as being a notice in the Harris Mining District, I will ask you to what that notice has reference, and ask you to tell me why you placed that in the Harris Mining District—what is there about it that leads you to believe that it is in the Harris Mining District when there is nothing in that portion of the notice that indicates it is in the Harris Mining District, or where it is at all?

(Testimony of L. E. Van Winkle.)

A. It is dated Alyward Lake, June 9, 1884. "Notice is hereby given that we, the undersigned, have this day located 4,000 inches of water at the mouth of this lake for milling purposes. Ed Alyward, John McLaughlin."

Q. Where is Alyward Lake?

A. I couldn't tell you.

Q. You don't know anything about it?

A. It might be most any lake, it is evidently named after the locator.

Q. Do you know of any such lake in the Harris Mining District?

A. I don't know of any; no, sir.

Q. You don't know of any inside or outside of the Harris Mining District? A. Not personally.

Q. Do you know of any personally or otherwise?

A. No.

Q. Never went into that subject at all. Now, I call your attention to another location occurring on Page 281 of this same book of Lodes, which you have indicated as a notice being omitted by Mr. Marshall, made by Mr. Sagemiller, and ask you [1726—1576] to look at that location and ask you if that is the location you referred to, as it appears on that page—that is the one, isn't it?

A. Yes; that is the same one.

Q. Read it into the record, please.

A. "Notice is hereby given that the undersigned have this day located and do hereby claim all the water of this gulch for milling purposes, also a lot of land of five acres adjoining and northeast of this

(Testimony of L. E. Van Winkle.)

notice as marked and blazed on trees; said mill site and water right are in conjunction with the Taku Union Gold & Silver quartz mine and is situated about a half a mile from Harrisburg on the south-east side of Gold Creek in Harris Mining District, Alaska. *Per* shall be known as the Taku mill site, Located May 16, 1881. Recorded May 19, 1881. J. D. Sagemiller, Charles Wells, Joe Juneau, R. T. Harris. R. Dixon, Recorder."

Q. You designated a certain number of notices here—you have here in your exhibit "R-2" plus, four notices made by Dennis McLaughlin, John McLaughlin, Dan Sullivan and J. McCloskey, at William Henry Bay, on June 21, 1898, found in Book 14, Pages 29, 30 and 31—have you those four notices before you? A. Yes.

Q. Those water location notices are designated as being at William Henry Bay?

A. In the Harris Mining District.

Q. In the William Henry Bay? A. Yes, sir.

Q. Do you know where William Henry Bay is?

A. It is dated at William Henry Bay, it doesn't say it is located there. [1727—1577]

Q. Do you know where William Henry Bay is?

A. Yes; it says it is in the Harrison Mining District; there is no such district as the Harrison Mining District and I took it to be the Harris Mining District.

Q. Did you inquire where the William Henry Bay was?

A. No; the fact it was dated at William Henry



(Testimony of L. E. Van Winkle.)

Bay wouldn't be sufficient for me to say that it was located there.

Q. Did you inquire where William Henry Bay was?

A. It is dated June 21, 1898, at William Henry Bay.

Q. You know William Henry Bay is up near the Endicott River, don't you?

A. No; I don't I think it is in the District.

Q. I now call your attention to the notice of John McLaughlin, Dennis McLaughlin, and John Sullivan on Page 29 of the records, it being the first of the four notices to which I have just referred you to—do you see that notice? A. Yes.

Q. Just read that into the record.

A. "Water right location notice. William Henry Bay, Harrison District, Alaska. June 21, 1898. We, the undersigned, claim 3,000 inches of water on this creek, name not known, for mining and milling purposes, and will be conducted by a ditch to where it is needed. Located June 21, 1898. Dennis McLaughlin, John McLaughlin, Dan Sullivan, locators."

Q. Those other three notices that follow those are just the same, practically?

A. I believe they are all dated at the same place, and given in the Harrison Mining District.

Q. And they practically have the same language?

A. Very much the same as I read then.

Q. You know the Harrison Mining District is not the Harris Mining [1728—1578] District, don't you?

(Testimony of L. E. Van Winkle.)

A. I know there is no Harrison Mining District.

Q. How do you know there is not?

A. I could not find any.

Q. There may be a Harrison Mining District away up where William Henry Bay is without your knowing anything about it, mightn't there?

A. It doesn't show.

Q. Did you ever find out where William Henry Bay is?     A. No, sir; I did not.

Q. How do you know that William Henry is not in the Harrison Mining District?

A. I know the Harrison Mining District could only refer to the Harris Mining District.

Q. Isn't there a Harrison Mining District up at William Henry Bay?     A. I never looked for it.

Q. Did you look for any note of the Harrison Mining District?     A. Yes, sir.

Q. Did you look to find out where the Harrison Mining District was?     A. No.

Q. Where did you look for it?

A. I couldn't find any note of it anywhere in the records.

Q. Aren't those notices that you have in the records, those four locations, in the records of the Harris Mining District?

A. Yes; they are all in the Harrison Mining District—that is the first notice I ever had of it.

Q. Those were the only notices from William Henry Bay that you found contained in these records? [1729—1579]     A. I didn't find any others.

Q. Now, William Henry Bay is one hundred or

(Testimony of L. E. Van Winkle.)

one hundred and fifty miles away from here to the north, isn't it? A. I don't know.

(Whereupon court adjourned until 2 o'clock.)

## AFTERNOON SESSION.

August 14, 1914, 2 P. M.

L. E. VAN WINKLE, on the witness-stand.

Mr. HELLENTHAL.—I don't think I wish to ask Mr. Van Winkle any more questions.

## Redirect Examination.

(By Judge WINN.)

Q. Just a few questions, Mr. Van Winkle. Now, then, I will hand you the list of water location notices that was made by Mr. Marshall, which is Plaintiff's Exhibit No. 41, and ask you to look at it and refresh your memory as to how many water location notices Mr. Marshall has claimed that there are within the boundaries of the Harris Mining District—he has given some total there, hasn't he?

A. Yes, sir.

Q. What is it? A. 386.

Q. Now, I will hand you Defendant's Exhibit "R-2," which is a list of water location notices that you have prepared and which we have offered in evidence. Now, I will ask you to state to the Court what water location notices you have included upon this list that are not in Mr. Marshall's list?

A. Notices added to this list and not found in Mr. Marshall's list, are indicated by the word omitted in the left-hand [1730—1580] margin; on the right-hand margin where we also cut that notice out,

(Testimony of L. E. Van Winkle.)

or any notice out of this list, is written "Outside of District," and where a notice is shown with the word "Omitted" written on the left-hand margin and nothing written on the right-hand margin we have put that in.

Q. In other words, that list that you hold in your hand is made up from Mr. Marshall's list with a view of getting out a summarized list, and you have added a few in your list?     A. Yes, sir.

Q. Now, I will hand you Defendant's Exhibit "R-2" plus, and ask you whether or not in that list which you testified to the Court contained, I think, 37 water locations—has Marshall any of those in his list?     A. No, sir.

Q. Now, then, Mr. Hellenthal questioned you this morning considerably about a location known as the Tripp location, which happens to be one of the locations that is in this case; I will ask you in classifying the Tripp water location which you indicated to Mr. Hellenthal as being a specific point to which the water was carried, and to explain to the Court why you put that under the specific head?

A. I understand the Ebner is a mine in operation, having a mill and machinery; and my reason for calling that a specific place of use was that it was designated in the notice as being used at the mine.

Q. The Ebner mine?     A. The Ebner mine.

Q. In other words, you thought it was intended to convey it—     A. To the mill. [1731—1581]

Q. And that is the reason you classified it under that head. Now, Mr. Van Winkle, Mr. Hellenthal

(Testimony of L. E. Van Winkle.)

exhibited to you a number of locations here—I think all of them, or a majority of them, had been made by Mr. Kinzie within the last few years in the Harris Mining District—and he asked you something concerning them, as to whether or not they were a criterion to go by and that you had gone by in making your classifications that you have set forth of the water location notices which are attached to the front page of Defendant's Exhibit "R-2." Now, I will ask you, in your examination of the records of these water location notices, approximately how many water location notices did you find where there was a surveyed outline from the point from which the water was supposed to be taken from, and the flume or a ditch line surveyed out by courses and distances like these in Kinzie's notices that were exhibited to you by Mr. Hellenthal?

A. There are a very few with definite lines surveyed out such as those notices are; as I told Mr. Hellenthal this morning, those were a great deal better than the most of them that I came across.

Q. Now, I will ask you, Mr. Van Winkle, in making up these two lists of water location notices, if you got from the records substantially the language that is used in the water location notices therein referred to as to the place where the water is to be used? A. Substantially.

Q. I will ask you, Mr. Van Winkle, if you honestly and faithfully endeavored, in making up these lists to take the description of the points or places to which the water was to be conveyed from the

(Testimony of L. E. Van Winkle.)

water location notices which you found of record?

(Question objected to and reasked.) [1732—1582]

Q. I will ask you, Mr. Van Winkle, how you got the descriptions in these two exhibits as to the place where the water was to be conveyed in each particular case as it is set out in these exhibits—how did you arrive at it?

(Question not answered because of objection.)

Q. I will ask you, Mr. Van Winkle, if either Mr. Burton or myself, or anyone else, mentioned to you anything about this Tripp notice as being one of the notices that was a subject of controversy in this suit before the Court?     A. No, sir.

Q. Did you know until this morning when Mr. Hellenthal questioned you about it, that such a notice was the subject of controversy in this suit?

A. No, sir; I did not.

Q. I will ask you, Mr. Van Winkle, on one point which Mr. Hellenthal questioned you considerably about, that is about some location notices on a creek called Bear Creek—I will ask you if Mr. Marshall has included in his list of water locations any location given on a creek called Bear Creek?

A. Yes, sir; he has.

Q. I will ask you if there is any location notice that describes where Bear Creek is?     A. Yes, sir.

Q. Where does it describe it as being?

A. On Douglas Island.

Q. And it is for that reason that you put your location on Bear Creek as being in the Harris Mining



(Testimony of L. E. Van Winkle.)

District? A. Yes, sir.

Judge WINN.—That is all. [1733—1583]

Recross-examination.

(By Mr. HELLENTHAL.)

Q. You don't know which Bear Creek Mr. Marshall included and which he excluded, do you—you know there is a Bear Creek on Admiralty Island, don't you? A. No, I don't know that there is.

Q. You know there is one on Douglas Island, don't you?

A. I know there is one on Douglas Island.

Q. Do you know which one Mr. Marshall included and which one he excluded?

A. I could not say from my recollection that he excluded any.

Q. Didn't you give one notice as being on Bear Creek which Mr. Marshall is said to have omitted from his list? A. I don't remember.

Mr. HELLENTHAL.—All right—that is all.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [1734—1584]

The defendant, to further maintain the issues on its part, called as a witness in surrebuttal F. J. WETTRICK, who having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant (In Surrebuttal).**

Direct Examination.

(Judge WINN.)

Q. I will hand you Defendant's Exhibit "S-2" for Identification, and ask you what that is a map and plat of, Mr. Wettrick, just in a general way, not going into the details of it.

A. That is a map showing the country from the international boundary line above Skagway to the end of Admiralty Island.

Q. What authenticity has it—what is it from, Mr. Wettrick?

A. It is a topographical map which was prepared by the Geographical Survey Engineers to accompany the report on the Juneau Gold Belt, issued by the Geological Survey Department of the Interior.

Q. I will ask you, Mr. Wettrick, if you have read over in one of these pamphlets that has been offered in evidence in this case some rules and regulations pertaining to the Harris Mining District which were passed back in the 80's, and from that do you know what is the description in there, in that amended description, as the Harris Mining District—what country it goes over?

A. I have read it and I know what property is purported to be described there.

Q. Now, I will ask you, if on this exhibit which you have in your hand, you have taken that description as well as you could from the description in the rules and regulations of the [1735—1585] Harris

(Testimony of F. J. Wettrick.)

Mining District, and have marked out the boundary lines as described in those rules on this exhibit?

A. I have.

Q. What is it indicated on this exhibit by?

A. The boundary line is indicated in blue, and the area included within those boundary lines is designated the Harris Mining District.

Q. That is approximately as near as you can get it from the description given in the rules and regulations of the Harris Mining District?

A. Yes; the description in there is just general, and isn't very accurate, and that is as near as one can get it.

Q. That description, Mr. Wettrick, refers to Auk Village—did you take the Auk Village here at Juneau or did you take the Auk Village further up the Channel as the commencing point?

A. I took the Auk Village which is given in the description as the commencement point.

Q. And the Auk Village which you took as the commencement point is the Auk Village further up the Channel from Juneau? A. Yes, sir.

Q. Now, I will ask you, if, on this map and plat, besides marking out the boundary lines approximately or as near as you could get them from the description you have, if you have included or placed any written matter besides that that was originally on the map? A. Yes; I have.

Q. Just state to the Court what you placed on there?

A. The map is on rather a small scale, and the

(Testimony of F. J. Wettrick.)

names of some of the creeks were not printed on this map, and I put the names on as given in another one of the geological survey [1736—1586] maps in this same bulletin, which is the report of the Juneau Gold Belt, and I have named the Glacier River which was not named on there.

Q. You have been over these creeks yourself and you know where they are without referring to any matters of any kind, don't you?     A. Oh, yes.

Q. And have seen them and know where they are on the ground?     A. Certainly.

Q. And as you have placed them on there, are they correct?

A. The creeks were already on there; all that I did was to put the names on.

Q. Now, I wish you would go over this map and just state to the Court what creeks are included in the exterior boundary lines of what you have marked out on there as the Harris Mining District.

Mr. HELLENTHAL.—The plat will show for itself—let the plat go in evidence.

The COURT.—The plat will be received.

(Whereupon said map and plat was received in evidence and marked Defendant's Exhibit "S-2.")

Q. Have you marked on this map and plat all of the creeks or rivers that have been found within the exterior boundary lines of the Harris Mining District?

A. Well, I don't suppose I have marked all of them; there are a great many creeks on there that I don't know the names of, and I just put the names

(Testimony of F. J. Wettrick.)

of some of the larger ones.

Q. I will ask you to state to the Court, Mr. Wettrick, what creeks that you know are included in the exterior boundary [1737—1587] lines of the Harris Mining District that you have placed on this map—give the names of some of the creeks.

A. Beginning at Taku Inlet, Carlson Creek, Rhine Creek, Grindstone Creek, Little Sheep Creek, Sheep Creek, Gold Creek, Granite Creek, Salmon Creek, Lemon Creek, Glacier Creek, Nugget Creek, Glacier River, Montana Creek, Fish Creek, Eagle Creek, Cowee Creek, Lawson Creek, Paris Creek, Bullion Creek, Ready Bullion Creek, Nevada Creek, Hilda Creek; I think those are all that I have named and all that were named on this map, together with those whose names I put on there.

The COURT.—As being in the Harris Mining District? A. Yes, sir.

Q. Now, you have placed all of these names that you have read off on this plat, have you?

A. No; a great many were on already; in some places the scale being so small, the names were omitted, and I put the names on.

Q. You give Montana Creek—is all of Montana Creek in the Harris Mining District?

A. No; not all of Montana Creek—that creek is called McGinnis Creek—it is called Montana Creek on this map; that is to say, McGinnis Creek, which flows from the northwest, is the larger of the two creeks, and locally it is known as Montana Creek; they have McGinnis Creek flowing into Montana

(Testimony of F. J. Wettrick.)

Creek and Montana Creek flowing into Glacier River; I notice on this map that Montana Creek appears to be here named Montana Creek, as the tributary of the Glacier River, and the boundary line crosses Montana Creek, or locally McGinnis Creek, somewhere along its length about half way from the mouth. [1738—1588]

Q. Is that all shown on that plat?

A. Yes; except locally the names have been interchanged.

Q. That explanation which you have given about a certain part of the Montana Creek being locally known as McGinnis Creek—that don't show on the map? A. No.

Q. But you know that to be a fact outside of the map and from your own general information of this vicinity and know where the creeks are?

A. Yes; I have done considerable work up in that section, and that part of the creek has always been referred to as McGinnis Creek.

Q. Did you ever make any water location notices up on any one of those creeks working any of those mines up about Auk Bay?

A. I prepared some data from which the notices were made; yes, sir. That is, I prepared the map showing the streams and the conflux of the various streams so that the notice might be made up and properly posted.

Q. Do you, or do you not, know where those notices were posted, and the name of the party who posted them?



(Testimony of F. J. Wettrick.)

A. The information I furnished was furnished for the Auk Bay Mines Company, who had under bond the Auk Bay claims.

Q. You had nothing to do with the posting of the notices?

A. No; I had nothing to do with the posting of the notices.

Q. Do you remember what creek those notices contained and the names of the parties who made them?

A. Yes; I know what water was claimed and is claimed under that notice—the creek known as Wiley Creek, which flows into Auk Lake and not named on this map—a small creek flowing into Auk Lake.  
[1739—1589]

Q. That is another one you left out? A. Yes.

Q. That creek was named after Perry Wiley, was it? A. Yes, sir; flows across some of his claims.

Q. Did you ever run across a creek around here within the boundary lines of the Harris Mining District as you have delineated upon this map, known as Canyon Creek? A. No; I don't believe I have.

Q. Did you mention a while ago whether or not there was a Bear Creek on Douglas Island?

A. Yes; there is a Bear Creek on Douglas Island; there is also one on Admiralty Island; there are a great many Bear Creeks around the country.

Q. Is there more than one Nugget Creek that you know of? A. No; not in this section.

Q. Are there any more than one Salmon Creek or Salmon River in this vicinity?

(Testimony of F. J. Wettrick.)

A. Not within the Harris Mining District that I know of.

Q. You mentioned Nugget Creek, didn't you?

A. Yes.

Q. About what portion of McGinnis Creek would be in the Harris Mining District—that is, approximately what is the length of it as delineated upon the map or as you know McGinnis Creek upon the ground?

A. A little more than one-half is known as, what is designated on here as Montana Creek—what is known as McGinnis Creek—a little more than one-half.

Q. Would that be at the upper end, or commencing at the mouth?

A. Lower end of the creek flowing into the Glacier.

Q. When you say one-half approximately, do you know what the distance would be that is in the Harris Mining District— [1740—1590] that is, the McGinnis Creek, sometimes referred to as Montana Creek—how much of it is in the Harris Mining District—half a mile, mile or what?

A. There is a scale on there in miles.

Q. It would be pretty hard to get the distance on that map. Now, I will ask you, Mr. Wettrick, have you ever traversed McGinnis Creek or any portion of it?

A. Yes; I have been up there a number of times.

Q. Aside from the map, do you know approximately from your own knowledge about how much of McGinnis Creek, or what is sometimes referred to

(Testimony of F. J. Wettrick.)

as Montana Creek, would be in the Harris Mining District? A. Yes; I do.

Q. How much? A. Between  $2\frac{1}{2}$  and 3 miles.

Q. Do you know anything about a water location made in July, 1908, by a man by the name of Stephens and George Dull on any creek that is a tributary of either Montana or McGinnis Creek up there?

A. No; not of my own personal knowledge.

Q. You would not know on what point of those creeks the location was made; you wouldn't know whether it was in the Harris Mining District or outside of the Harris Mining District? A. No.

Judge WINN.—That is all. [1741—1591]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You know, Mr. Wettrick, a little piece of Montana Creek or McGinnis Creek—you know it is mostly flat?

A. I know the country is not very steep through which it flows.

Q. Mr. Wettrick, your point of starting that line at Auk Village, you have got that Auk Bay, haven't you? A. Oh, no.

Q. Do you know where Auk Village is?

A. Yes; I know where Auk Village is.

Q. Let me call your attention to another map published by the same government survey, of the Juneau Gold Belt?

A. No; that is entirely a different map, and has nothing to do with the Juneau Gold Belt.

(Testimony of F. J. Wettrick.)

Q. It shows the Auk Village?

A. No; it shows the cabins of the old timers that are on the beach there, West Wadelich's cabin and one or two others.

Q. Where is Auk Village?

A. Auk Village is within about a mile of that place, right in the same bay.

Q. Any Indian buildings at Auk Village?

A. There were, but there are not now.

Q. You never saw them there?

A. I don't remember whether I saw any buildings there or not; I saw the ruins of some, though, and you will find that to be exactly the place where I put that line.

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [1742—1592]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal WILLIAM M. EBNER, who having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of William M. Ebner, for Defendant  
(Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Ebner, in some one of the water location notices in this case that Mr. Hellenthal examined Mr. Van Winkle about this morning, and he laid considerable stress about the proposition of where there was any mining property that was ever known as the

(Testimony of William M. Ebner.)

Eureka Hill claim, I will ask you if you know where the Eureka Hill claim used to be, or what property is now called the Eureka Hill claim? A. Yes, sir.

Q. Where is that property, Mr. Ebner?

A. The Eureka Hill claim was a placer and was in Silver Bow Basin, and it was about the same ground as is now contained in what is called the Eureka lode claim.

Q. Do you know who owned the Eureka Hill claim or claims when you first came to Alaska?

A. I don't remember just who the owners were.

Q. According to what the plaintiff in this case contends to be the Harris Mining District, would that property be within or without the Harris Mining District? A. It would be within.

Q. And any water taken up to work those claims would necessarily be within the Harris Mining District, wouldn't it? A. Yes, sir. [1743—1593]

Q. Unless it came over the top of some mountain?

A. Yes, sir.

Q. How long, Mr. Ebner, have you known of this Auk Village in Juneau?

A. You mean the Auk Village?

Q. Yes; Auk Village.

A. Oh, ever since I have been here—when I first came here, that was divided part Taku and part Auk, but the old Auk Village in Auk Bay contained a number of houses in 1892, the first time I saw it.

Q. Both places, however, have been referred to as Auk Village?

A. Not altogether; this one here was called Indian

(Testimony of William M. Ebner.)

town in Juneau here, and the other was always designated, as I remember it, as the old Auk Village.

Q. There has been something said about some Indian villages being on Taku Inlet—Taku Inlet is not very far from here, is it, Mr. Ebner?

A. About, I should judge, nine miles.

Q. Now, as you turn to go up Taku Inlet, where are the first Indian villages you strike?

A. The first Indian villages after you turn this side of Point Bishop is what is called Taku Village.

Q. On the left-hand side as you go up?

A. Yes, sir.

Q. Is there another Indian village on that side, or just one?

A. That is the only one I remember on Taku Inlet.

Q. Mining claims on that inlet are located on the left-hand side of the Inlet as you go up, aren't they?

(Not answered because of objection.)

Q. Do you know of any Indian villages on the right-hand side of the inlet? [1744—1594]

A. Not on the right-hand side; when I first came here there was an Indian village up the river, called the Taku Village; that is on the left-hand side going up from Taku Harbor, but they all moved over on the north side of the inlet, although the last time I was up the Taku Inlet there was quite a village on the right-hand side, but I think it was mostly fishermen.

The COURT.—Indian fishermen or white fishermen? A. No, sir; white.

Q. Were there any mining claims around that vil-



(Testimony of William M. Ebner.)

lage on the right-hand side?

A. No; not around the village, no mining claims at all until you get back of Taku Harbor.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. There are a lot of mining claims up around Lake Turner, aren't there? A. I don't know.

Q. You don't know what claims there may be in that neighborhood?

A. There maybe some; I am speaking more particularly about 10 or 12 years ago.

Q. You are speaking more particularly about the mining claims you know of—you don't know of any mining claims in that vicinity?

A. I don't know of any in that vicinity; no.

Q. You have never made any particular study of that, have you?

A. No; very little; I did some prospecting up there but it never [1745—1595] looked very encouraging.

Q. You know there are quite a number of mining claims around Turner Lake, don't you?

A. There may be but I don't know.

Q. You know that is on the north side of the inlet, outside of the Harris Mining District, don't you?

A. Lake Turner is on the left-hand side of the inlet, outside of the Harris Mining District.

Q. There may be, as far as you know, other Eureka Hill mining claims other than those you have

(Testimony of William M. Ebner.)

referred to in the Basin?     A. I don't know of any.

Q. There may be others located around the country that have given that name to their mining claims?

A. There may be, but none that I know of.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1746—1596]

The defendant, to further maintain the issues on its part, recalled as a witness in surrebuttal F. J. WETTRICK, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant  
(Recalled in Surrebuttal).**

Direct Examination.

(By Judge WINN.)

Q. You are acquainted with Taku Inlet, personally?     A. Quite well.

Q. You have been up and down it?     A. Yes, sir.

Q. Now, I will ask you what, if any, Indian villages there are on the left-hand side as you go up the Inlet?

A. There is an Indian village on the left-hand side going up; the one that Mr. Ebner spoke about down here about one mile this side of Point Bishop, I have seen some Indians camped somewhat near the mouth of Carlson Creek, but the main village is called Taku Village, on this side of Point Bishop.

Q. And these two that you have mentioned, where you saw them camped and where they are located around the point here, are those on the left-hand side

(Testimony of F. J. Wettrick.)

of the inlet as you go up?

A. Yes; there is another place that Indians sometimes inhabit, right near Point Bishop, on the left-hand side going up the inlet—really on this side on Point Bishop, about a quarter of a mile, there are some two houses and a shack there.

Q. Do you know what Indian villages, if any there are on the right-hand side of the inlet as you go up? [1747—1597]

A. Yes; there is an Indian village, fairly good sized one, on the right bank of the river going up, not quite half way to the boundary line.

Q. That is on the river?

A. Yes; that is on the river.

Judge WINN.—That is all.

Mr. HELLENTHAL.—No questions.

(WITNESS EXCUSED.)

DEFENDANT RESTS. [1748—1598]

The plaintiff, to further maintain the issues on its part, recalled as a witness in rejoinder R. A. KINZIE, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of R. A. Kinzie, for Plaintiff (Recalled in Rejoinder).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Kinzie, I hand you here a map which has not been marked yet, but you can tell what it is in a general way, and then I will offer it in evidence?

(Testimony of R. A. Kinzie.)

A. It is a map of the country just north of Douglas Island, entitled "Topographic Map of Eagle River Region, Alaska," published by the United States Geological Survey.

Q. It contains a considerable part of the Harris Mining District?

A. It shows a portion of the Harris Mining District.

Q. You know the boundaries of the Harris Mining District, don't you?     A. I do.

Q. What portion of the Harris Mining District is shown on that map?

A. The northeastern portion.

Q. Will you draw a line on that map showing which boundary of the Harris Mining District you can put on there?

(Question objected to and not answered.)

Q. Mr. Kinzie, are you also a civil engineer?

A. No, sir; I am not.

Q. You understand surveying, don't you?

A. Yes.

Q. Are you able to plat on that map the boundaries of the Harris [1749—1599] Mining District?

A. Yes, sir.

Q. Accurately?     A. Yes.

Q. No question about your ability to do that, Mr. Kinzie, is there?     A. I think not.

Q. You may plat it on there.

(Objection to question.)

Q. Do you know the boundary lines of the Harris Mining District?     A. I do.

(Testimony of R. A. Kinzie.)

Q. All right, now put them on with red pencil so I can see where they are—put the boundaries on so far as they can be shown on this map.

A. The red line shown on the map is approximately the northwest boundary line of the Harris Mining District; I have nothing on this map to guide me in putting on the other lines.

Q. You have nothing there so you could put the other lines on accurately?

A. No; there isn't anything here to guide me.

Q. Do you know where the old Auk Village is, Mr. Kinzie?     A. I do.

Q. Have you been there?     A. I have.

Q. Know where it is on the ground?

A. Yes, sir; I do.

Q. Does it still show there?

A. It did the last time I was there.

Q. How long ago was that? [1750—1600]

A. About five years ago.

Q. Does it show on the map I have just handed you?     A. It does.

Q. Please mark on that map with the letter A the place where the village is?

(Witness does so.)

Q. Now, I hand you a map which has been received in evidence as Defendant's Exhibit "S-2," and ask you to look at that and state if that accurately shows the boundaries of the Harris Mining District?

A. No; I don't think it does.

Q. Can you plat on there the boundaries of the Harris Mining District, in red?     A. Yes.

(Testimony of R. A. Kinzie.)

Q. I wish you would do so—the line you make in red marking the correction you make upon the map?

(Witness marks map with red pencil.)

Q. The balance of the blue line is correct?

A. I believe it is.

Q. Does that red line start at Auk Village as it actually exists upon the ground?      A. It does.

Q. I hand you here a map marked No. 66—that is the map you have been looking at,—state what that is with reference to this map Defendant's Exhibit "S-2"—it shows part of the same country, doesn't it?

A. It does; it shows the northwestern portion.

Q. Shows it on a larger scale?

A. Shows it on a larger scale, giving the names of the various [1751—1601] creeks, rivers, and so forth.

Q. It gives the names of the creeks that have been platted in here by Mr. Wettrick, most of them, where Mr. Wettrick has supplied a name, the name is already on that map, is that right?      A. Yes.

Q. And shows a larger proportion of the Harris Mining District, in greater detail than on the other map?      A. Yes; on a large scale.

Mr. HELLENTHAL.—I offer this map in evidence, your Honor.

(Whereupon said map was received in evidence and marked Plaintiff's Exhibit No. 66.)

Q. Calling your attention now to Defendant's Exhibit "S-2," I will ask you if that shows Twin Creek?

A. It does; yes.



(Testimony of R. A. Kinzie.)

Q. Where is Twin Creek?

A. Twin Creek is just north of Lake Turner.

Q. In or outside of the Harris Mining District?

A. Outside.

Q. Where is Lake Turner, inside or outside?

A. Outside.

Q. Where is Kar Creek—is that in or outside of the Harris Mining District?

A. It is outside of the Harris Mining District.

Q. That flows into Turner Lake from the south.

A. Yes.

Q. And you know where Davies Creek is?

A. I do.

Q. Where is that.

A. Davies Creek flows into Turner's Bay. [1752—1602]

Q. Davies Creek isn't in the Harris Mining District—any part of it, is it? A. It is not.

Q. You know where McGinnis Creek is?

A. I do.

Q. How much of that is in the Harris Mining District? A. None at all.

Q. You know where Montana Creek is? A. I do.

Q. How much of that is in the District?

A. Something over two miles?

Q. What part of the creek is in the Harris Mining District?

A. The part that flows through the flat.

Q. Is there fall enough through that flat to develop power? A. Not in that portion.

Q. Couldn't locate a water right on that part with

(Testimony of R. A. Kinzie.)

any intention of developing power?     A. No.

Q. Do you know where Bear Creek is?

A. I know where there are two Bear Creeks; there is one Bear Creek on Admiralty Island that flows into Young's Bay, and there is also a small Bear Creek on Douglas Island that flows through the Town of Douglas.

Q. Is Bear Creek on Admiralty Island in the Harris Mining District?     A. No, sir.

Q. Do you know where Eagle River is?

A. I do.

Q. Is Eagle River in the Harris Mining District?

A. It is not.     [1753—1603]

Q. Do you know where Glacier Creek is?

A. I do.

Q. Is any part of it within the Harris Mining District?     A. No.

Q. Do you know if both creeks furnish the power for the Eagle Mining Company?     A. They do.

Q. Are they inside or outside of the Harris Mining District?     A. Outside.

Q. Do you know where Cowee Creek is?

A. I do.

Q. Where is it?

A. Cowee Creek is northwest of Yankee Mining District, going into Berner's Bay.

Q. Is that spelt with a C or spelt with a K?

A. Spelt with a K; there are two Cowee Creeks; one on Douglas Island.

Q. How is that one spelt?     A. Just the same.

Q. How long is Cowee Creek on Douglas Island?

(Testimony of R. A. Kinzie.)

A. Cowee Creek on Douglas Island, I should say, is three and a quarter or four miles long.

Q. Do you know where St. James Bay is?

A. Yes, sir; I do.

Q. Whereabouts is that?

A. That is on the west side of Lynn Canal.

Q. Is any part of it in the Harris Mining District?

A. It is not.

Q. Nowhere near it? A. No. [1754—1604]

Q. Do you know where Seward City is?

A. I do.

Q. Is it anywhere near the Harris Mining District? A. It is not.

Q. Up near Berner's Bay, isn't it?

A. Near Berner's Bay; yes.

Mr. HELLENTHAL.—That is all.

Cross-examination.

(By Judge WINN.)

Q. Mr. Kinzie, have you ever examined the water location notices of record to find out whether there is any distinction made in the spelling of the word Cowee?

A. I have seen notices where there was a distinction.

Q. You say the proper way to spell it is to spell it, one of them commencing with a C?

A. I say that is the way the Government has adopted on this map; I don't know which is the correct Cowee.

Q. Doesn't it commence with a K?

A. No; it is an Indian name.

(Testimony of R. A. Kinzie.)

Q. Now, when you located these water rights down at Turner Lake, why was it that you said they were near Juneau, Mr. Kinzie, in your notices?

(Question not answered because of objection.)

Q. Well, those creeks that you mentioned down there, flowing into Turner Lake, aren't very near Juneau, are they?

A. They are; well, the way you would have to go to them would be about 25 miles.

Q. Now, Mr. Kinzie, you and Mr. Wettrick differ in what is called McGinnis Creek, don't you? [1755—1605] A. Yes.

Q. You differ? A. Yes.

Q. You and Mr. Wettrick differ, and you wouldn't be surprised if the ordinary prospector in making locations would differ from you?

(Question not answered because of objection.)

Q. Now, you and Mr. Wettrick also differ as to the boundary lines of the Harris Mining District, don't you, as described and set forth in the exhibit that Mr. Hellenthal has offered in evidence in this case?

A. Well, as to the exact point on this exhibit as to where it should start; yes.

Q. Now, you and Mr. Wettrick differ approximately—that boundary line that you have drawn in red in this exhibit would be approximately how far from the boundary line which Mr. Wettrick has drawn on this same exhibit in blue?

A. From what distance?

Q. Would it be a mile?

A. No, I don't think so.

(Testimony of R. A. Kinzie.)

Q. What do you contend is the difference between you and Mr. Wettrick in making that location?

A. Just about a mile.

Q. You didn't use any instrument there in drawing your line at an angle of 45 degrees, did you?

A. No; I didn't; I presumed he had taken the proper course.

Q. Now, isn't it a fact, Mr. Kinzie, that you have marked there the West Wadelich homestead as the beginning of the Auk Village proper?

A. No; I know where West Wadelich's homestead is [1756—1606]

Q. There isn't anything on this map here that is marked Auk Village, is there?

A. No; on this map the village is not definitely shown; it is shown on the other map.

Q. Are you sure that on that map you marked with the red line, that that is the Auk Village as it is on the ground or the Auk Village on that map?

A. Yes, that is the Auk Village on the ground; it is not shown as the Auk Village on that map which is shown as designating a bunch of houses, and also shows West Wadelich's house.

Q. On this map that you have marked, have you ever done any surveying up in that neighborhood?

A. Personally?

Q. Yes. A. No, I have not.

Q. It has been how many years since you saw Auk Village?

A. It is four or five years since I have been right into the village.

(Testimony of R. A. Kinzie.)

Q. You are sure you have not commenced that line at Wadelich's homestead instead of Auk Village?

A. Oh, yes; I know where West Wadelich's homestead is.

Q. There wasn't any necessity of drawing that boundary line down to intersect the boundary line that Wettrick drew, because, you knew from the description that the boundary line is supposed to run along the center of Stephens Passage, don't you, whether it is in a curved line or what it is?

A. Yes, sir; it is immaterial.

Judge WINN.—That is all. [1757—1607]

Redirect Examination.

(Mr. HELLENTHAL.)

Q. Mr. Kinzie, Canyon Creek on William Henry Bay is also shown on this map?

A. William Henry Bay is shown on this map, but Canyon Creek is shown on the other map.

Q. Are they marked so you can tell what they are?

A. William Henry Bay is marked William Henry Bay, and Canyon Creek is marked Canyon Creek.

Q. How many Canyon Creeks do you know, Mr. Kinzie? A. Two; one is on Chicagoff Island.

(Questions by Judge WINN.)

Q. Do you know a man here by the name of Cannon for whom Cannon Creek was named?

A. No; in fact, I know of two Canyon Creeks.

Q. The creek that Mr. Cannon may have named Cannon Creek—do you know where that is?

A. Simply from the wording of the description, the way I remember it.



(Testimony of R. A. Kinzie.)

Q. The wording of the description in what, Mr. Kinzie? A. In the water location.

Q. You have found it to be the habit throughout this mining district frequently for people to name the creek themselves, or after themselves, have you not? A. Yes, sir.

Q. Such as Wiley, and so forth, and they are private names, and unless a person knew something about it it would be very hard to ascertain where those creeks are? A. Yes, sir.

Q. (Mr. HELLENTHAL.) None of those Canyon Creeks that you [1758—1608] know of are in the Harris Mining District, are they?

A. They are not.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

Plaintiff rest. [1759—1609]

The defendant, to further maintain the issues on its part, recalled as a witness in surrejoinder F. J. WETTRICK, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant  
(Recalled in Surrejoinder).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Wettrick, there seems to be some difference in the boundary lines of what has been referred to throughout this case as the Harris Mining District, and on this exhibit "S-2" you have indicated

(Testimony of F. J. Wettrick.)

in a blue line the northern boundary line, and Mr. Kinzie has represented it in a red line; which is somewhat below and to the south of the upper line you have marked as the boundary line of this so-called Harris Mining District—I would like to ask you with what degree of accuracy you have located that northern line, and if there is any mistake in the one that Mr. Kinzie has put on; I wish you would explain it.

A. The red line is not correct because it starts from the wrong place; the reason I know that the starting of the red line is incorrect, as shown upon this map, exhibit “S-2,” is that in my official survey of the West Wadelich homestead I had occasion to determine this location with respect to other matters in that bay, and I know that the red line there is too far to the south; the point from which Mr. Kinzie has started the red line there is the Wadelich homestead and the buildings on the Wadelich homestead; I know that because I made the official survey of it, and I know that [1760—1610] country very well.

The COURT.—The only creek that question would affect is McGinnis Creek and Montana Creek, isn't it?

A. McGinnis Creek, Montana Creek and Wiley Creek—Wiley is one that I have mentioned in my testimony—that is the only thing it would affect.

The COURT.—And it would only affect the questions as to whether some of it was in the Harris Mining District?

A. That is right, with this additional fact, that the

(Testimony of F. J. Wettrick.)

further up you go on McGinnis Creek the higher the elevation.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The Wadelich homestead is shown—Mr. Wadelich's house is on this exhibit, isn't it?

A. Yes; at the point indicated by the red letter A; the old Auk Village is west of Coghlan Island, immediately within the bay.

Q. Are there no houses there at all?

A. There are no houses there at all; the village is no longer there; the remains of them are there.

Q. Where is Wadelich's house?

A. At the point marked by the red letter A.

Q. Wadelich's house is quite a little below the letter A, is it not?

A. Immediately under the letter A; yes, sir.

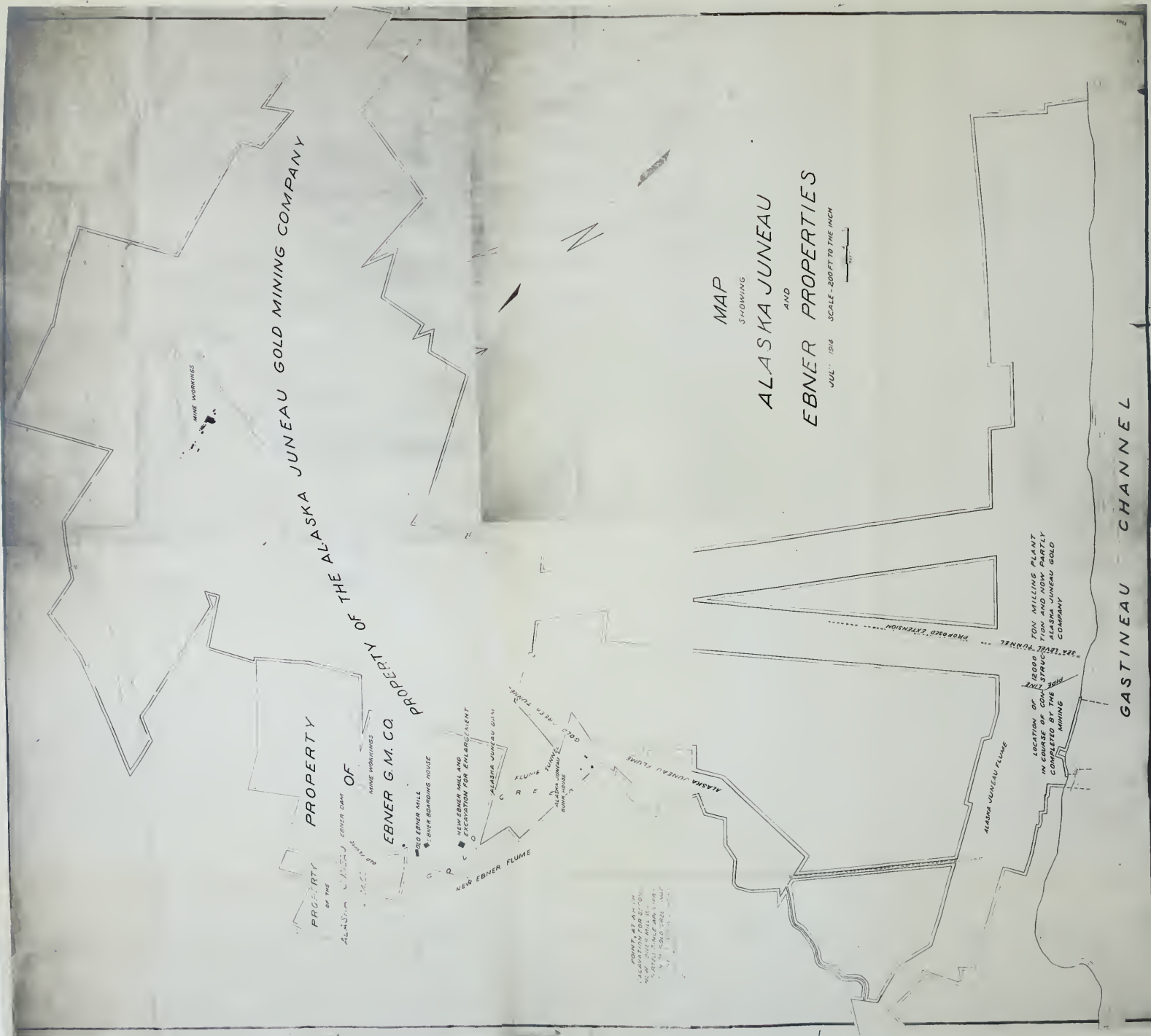
Q. It would show a mile or so below it; I think, wouldn't it?

A. No; Wadelich's house is at the commencement of the line drawn by Mr. Kinzie and presumed by him to be Auk Village, but incorrectly presumed, because Wadelich has more than one house on his homestead; he has sheds and he has a vegetable house [1761—1611] there, and there are two other sheds and foundations, and the cabin he lived in.

(WITNESS EXCUSED.)

TESTIMONY CLOSED. [1762—1612]









1935



W.H. CASE



1936

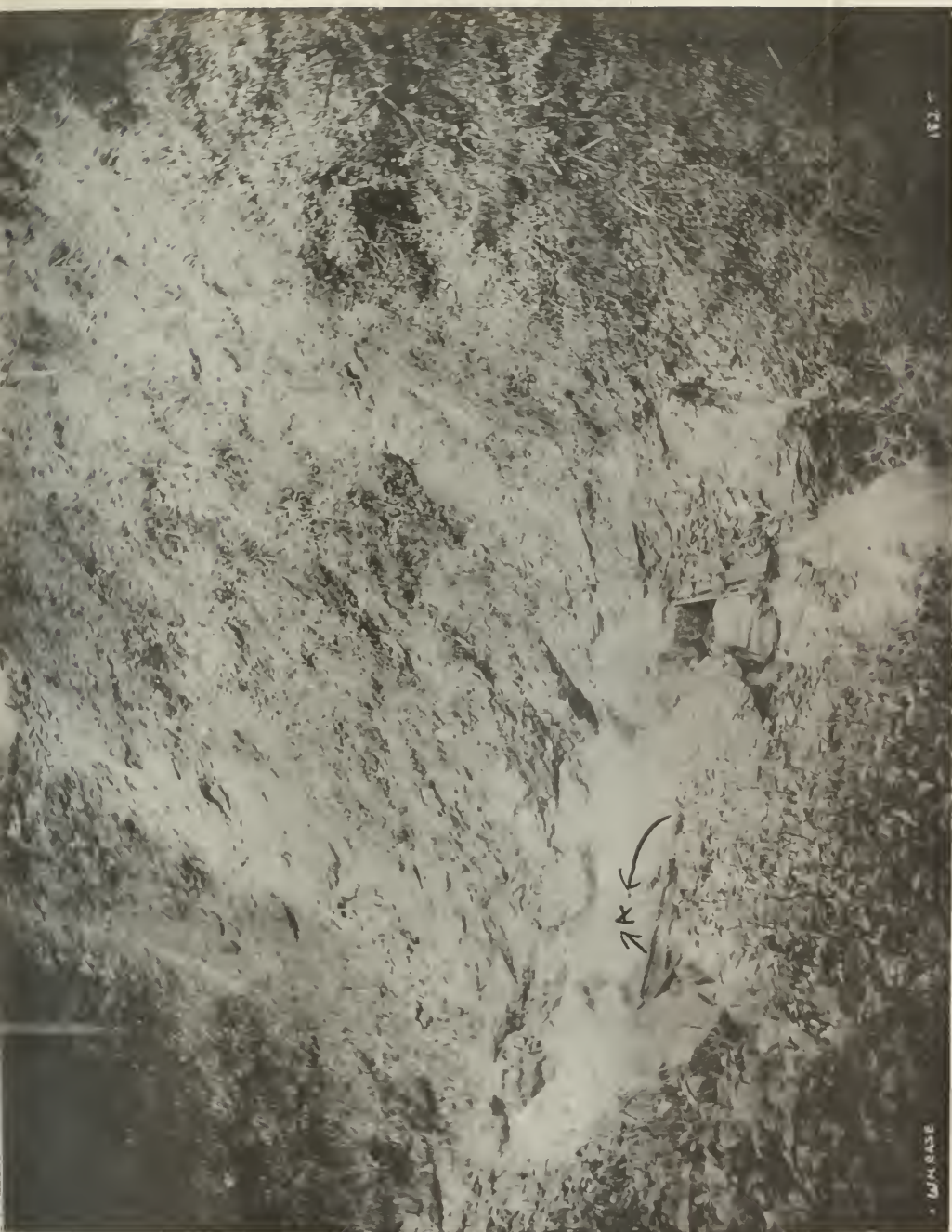


WILKASE





1937

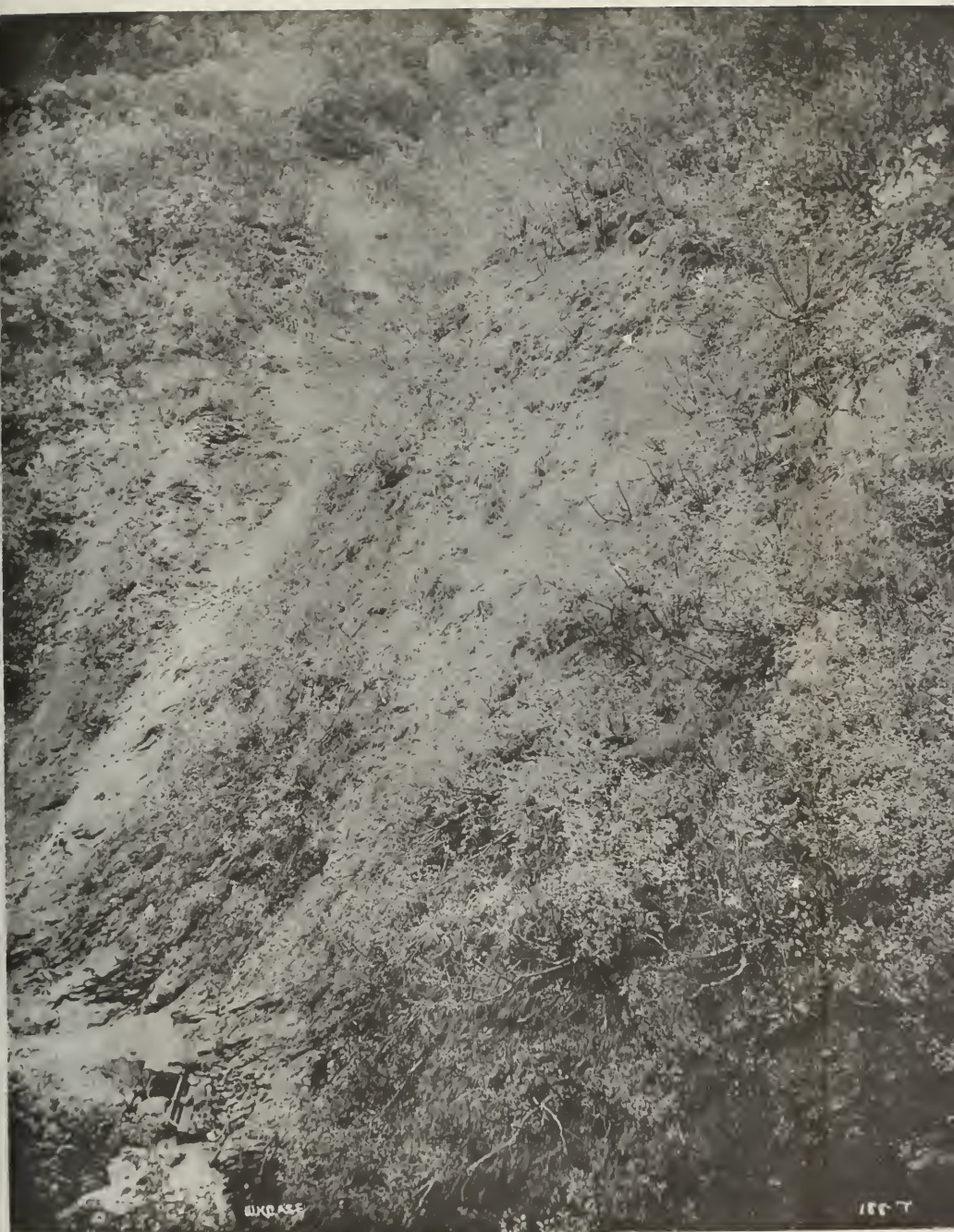


1937

W. H. RASE







WXP 455

185-7



1939







1940



1940

1940





1941





**Plaintiff's Exhibit No. 10—Notice of Alaska-Juneau Gold Mining Co. Re Waters of Gold Creek, etc.**

Plff. Exhibit No. 3. Received in evidence Jan. 13, 1914. In Cause No. 1074-A. J. W. Bell, Clerk. By \_\_\_\_\_, Deputy.

Plff's. Exhibit No. 10. Received in evidence Jul. 23, 1914. In Case No. 1074-A. J. W. Bell, Clerk. By J. T. Reed, Deputy.

Notice is hereby given, that, whereas, the Alaska-Juneau Gold Mining Company, did, by its agent, L. D. Mulligan posting a notice claiming and appropriating 20,000 inches of water from the waters flowing in Gold Creek, which notice is in words and figures as follows:

Know all men by these presents: That I, L. D. Mulligan, of Alaska, a citizen of the United States and over the age of twenty-one years, have appropriated and claimed 20,000 miners inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated in this notice, posted on a tree, and about one mile from the mouth of said Gold Creek.

Said water to be diverted by ditch, pipe and flume.

L. D. MULLIGAN.

Dated Aug. 1, 1910.

And, whereas, the said L. D. Mulligan acted as the agent of the undersigned in this connection who is now the owner and holder of said right so located by said Mulligan by virtue of such agency and by virtue of conveyances from said Mulligan: [1771]

Now, therefore, the undersigned, not waiving any of its rights or abandoning any of the rights belonging to it under and by virtue of said above described notice and the work of diverting the water of Gold Creek appropriated by reason thereof, and done pursuant thereto but for the purpose of giving a more accurate and detailed description of the beneficial uses to which said water is to be used when diverted and applied under the aforesaid notice and of the means whereby the same is to be conveyed to such place of intended use, hereby posts and records this additional and amended notice of appropriation of water, and gives notice to all persons whatsoever that it claims and appropriates under and by virtue of such original notice as well as this amended notice 20,000 miner's inches of the waters of Gold Creek measured under a four inch pressure for mining, milling, power and other beneficial uses, to be diverted from said creek at a point at or near the place where this notice is posted, the same being posted on the banks of Gold Creek about one mile and one eighth ( $1/8$ ) above the town of Juneau about 500 feet below the Ebner Mill and about 1250 feet above the Jualpa Dam and immediately at the point where the dam of the Alaska Juneau Gold Mining Company has been constructed and where the water is diverted under the above mentioned [1772] location notice, signed by L. D. Mulligan. The water so appropriated and claimed under said notice of L. D. Mulligan and hereunder is to be diverted from Gold Creek at that point, and conveyed by means of pipes, flumes, ditches and other means of conveyance, along

a proposed route running above the southerly side of the Last Chance Basin and thence around Swede Hill to a point at or near Jorgenson saw mill, on the shore of Gastineau Channel, where the same is to be applied and used for the purpose of generating power and for other purposes to be used in connection with the operation of a stamp mill at or near that point, and a portion of the water so diverted and appropriated is to be used at a point on the Colorado Claim near Snow Slide Gulch for the purpose of driving a compressor plant at that point and for the purpose of generating power at that point and these waters so used on said Colorado claim will be conveyed by a pipe, flume, ditch along the route above indicated and taken from said pipe, flume, and ditch to the extent so necessary at said last mentioned place if used for the purpose of furnishing power at that point as above stated. The remainder of the waters carried not used at this point at any time to be applied in connection with the operation of the stamp mill to be built near the Jorgenson saw mill as above stated. [1773]

Notice is expressly given, that the undersigned has not abandoned or *wived* any of the rights acquired under and by virtue of the notice of said L. D. Mulligan or by virtue of any of the work that it has heretofore performed looking towards the diversion and appropriation of the waters of Gold Creek or any other right or rights whatsoever it has at this present time to the waters of said creek.



1946 *Alaska-Juneau Gold Mining Company vs.*

Posted on the ground this 8 day of May, 1911.

ALASKA JUNEAU GOLD MINING COM-  
PANY.

By ROBT. A. KINZIE,

Agent and General Superintendent.

Filed for record at 4:45 P. M. May 8, 1911, and  
recorded in Book 10 of Placers, page 195.

I, John B. Marshall, U. S. Commissioner, ex-  
officio District Recorder, Juneau Recording District,  
Territory of Alaska, do hereby certify that the fore-  
going is a full, true and correct copy of the records  
of my office taken from Book 10 of Placers, page 195.

JOHN B. MARSHALL,

U. S. Commissioner, ex-officio District Recorder.  
[1774]



1947





1948

















1951







1952







**Plaintiff's Exhibit No. 17—Letter, September 28,  
1909, F. W. Bradley to R. A. Kinzie.**

Sep. 28, 1909.

R. A. Kinzie, Esq.,

Treadwell City, Alaska.

Dear Sir:

I have your letter 20th inst. together with reports covering Alaska Juneau operations for month ending 31st ult. I am greatly pleased to learn of the good grade of rock and hope that you may have as good grade for the remainder of the season. If so, we will soon have some money to spend on a more permanent plant. In this connection are two propositions to consider:

First. A New mill in the hydraulic pit.

Second: A tunnel from Gold Creek on the line of our patented right-of-way, and then a flume and track around the hillside where a mill could be located at sea level on our patented ground.

Which plan would you favor?

Yours very truly,

F. W. BRADLEY.

[Stamped across face of letter:] "Copy." [1781]

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**Plaintiff's Exhibit No. 18—Letter November 25,  
1909, Robert A. Kinzie to F. W. Bradley.**

Treadwell, Alaska,

Nov. 25, 1909.

Mr. F. W. Bradley,

San Francisco, Cal.

Dear Sir:

With reference to your letter concerning the estab-

lishment of a right-of-way for flume and railway line to Snowslide Gulch and a point on Gastineau Channel. I enclose herewith copy of a letter from L. P. Shackleford.

I am having the ground between Snowslide Gulch and our Utah claim, on Gastineau Channel, looked over carefully to determine what locations now exist, over which our right-of-way would pass. I do not anticipate that we will have any trouble in locating a right-of-way, and making arrangements with the present locators on the ground. None, over which we would pass, is patented, and I am very doubtful if the assessment work has been done.

Upon receipt of this letter, kindly let me know whether you wish me to go ahead with this right-of-way or not.

While in Mr. Shackleford's office, I handed him your letter and in some way it has been misplaced. I wish you would kindly send me a copy of the original letter, so that it can be placed on file in this office.

Yours truly,

(Signed) ROBT. A. KINZIE.

[Stamped across face of letter:] "Copy." [1782]

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**Plaintiff's Exhibit No. 19—Letter, December 11, 1909, F. W. Bradley to R. A. Kinzie.**

San Francisco, Cal., Dec. 11, 1909.

R. A. Kinzie, Esq.,

Treadwell City Alaska

Dear Sir:

I have your letter 25th ult. with copy of letter from Mr. Shackleford as stated.

Yes, I wish you would go ahead with the water location and right-of-way for combined flume and tramway on about the 400 or 500 foot contour line, as you may decide is the best position for the mouth of the proposed tunnel from Snowslide Gulch into the vein. If the best point is on the 500 foot countour line, you could make your water location in Gold Creek on that countour. We could take the water around by flume or ditch to the Snowslide tunnelsite and there put in pipe line and have compressor at 100 or 200 feet lower down. This would be the end of the flume or ditch, while the tunnel is being completed. When the tunnel is completed, the flume or ditch could then continue on its way to a point above the millsite on Gastineau channel.

I herewith hand you copy of my letter of Oct. 28th last as requested.

Yours truly,

F. W. BRADLEY.

1 Enc.

[Stamped across face of letter:] "Copy." [1783]

---

**Plaintiff's Exhibit No. 20—Letter, October 28, 1909,  
F. W. Bradley to R. A. Kinzie.**

San Francisco, Cal., Oct. 28, 1909.

R. A. Kinziem Esq.,  
Treadwell City,  
Alaska.

Dear Sir:

I have your letters 11th and 16th inst. with the reports for last month's work.

I note that you think the best scheme for the

1958 *Alaska-Juneau Gold Mining Company vs.*

Gastineau Channel where your claims abut on the shore of the Channel, I will say that I have examined the statutes in regard to this matter, and I would advise that your surveyor survey a line for your flume and railway, bringing his plat and field notes over to the office and I will draw up a notice of location, which I think will be sufficient to hold an easement upon the property until after the expiration of a reasonable time for construction.

It has been held in the land office that applications for rights of way over public lands for canals and ditches cannot be made for lands within the District of Alaska, in the case recently reported in which the Miocene Ditch Company was applicant. I do not consider this the law, but it seems to be the ruling of the Secretary of the Interior. We might apply for a tram road permit, in addition to the usual notice of location of right of way for flume, made in accordance with mining customs, and when your surveyor has been over the ground, his notes may be used for this purpose, if necessary. The main thing, however, is to get a description which can be placed in a location notice with the courses and distances of a flume or railway line.

Yours truly,

LEWIS P. SHACKLEFORD. [1786]

**Plaintiff's Exhibit No. 23.**

———NEAU TRA ———

Coal, Wood and General Teaming.

Juneau, Aug. 6/10.

Name.....

Article 3 lds. lumber.....9 hrs.

From Ferry floats.....

To Gold creek dam.....

Name.....

Article.....

From.....

To.....

Name.....

Article.....

From.....

To.....

Name.....

Article.....

From.....

To.....

Plffs. Exhibit No. 23. Received in evidence. Jul.  
25, 1914. In Cause No. 1074-A. J. W. Bell, Clerk.  
By J. T. Reed, Deputy. [1787]

—————  
**Plaintiff's Exhibit No. 24—Certified Copy of Notice  
of L. D. Mulligan Re Appropriation of Waters  
of Gold Creek, etc.**

[Endorsed]: Pltf. Exhibit No. 1. Received in  
evidence. Jan. 13, 1914. In Cause No. 1074-A. J.  
W. Bell, Clerk. By ———, Deputy.

Know all men by these presents: That I, L. D. Mulligan of Alaska, a citizen of the United States and over the age of twenty-one years, have appropriated and claimed 20,000 miners inches, of the waters of Gold Creek, near Juneau, Alaska, to be used for milling, mining and other purposes.

Said water to be diverted from said creek at a point indicated by this notice posted on a tree, and about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

L. D. MULLIGAN.

Dated Aug. 1, 1910.

Filed for record at 11 A. M. Aug. 8, 1910, and recorded in Book 10 of Placers, p. 178.

I, John B. Marshall, U. S. Commissioner, ex-officio District Recorder, Juneau Recording District, Territory of Alaska, do hereby certify that the foregoing is a full, true and correct copy of the records of my office taken from Book 10 of Placers, page 178 thereof.

JOHN B. MARSHALL,

U. S. Commissioner, ex-officio District Recorder.

[1788]

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**Plaintiff's Exhibit No. 25—Assignment of L. D. Mulligan to Alaska Juneau Gold Mining Company.**

[Endorsed]: Pltff. Exhibit No. 25. Received in evidence. Jan. 13, 1914. In Causes No. 1074—A. J. W. Bell, Clerk. By —————, Deputy.



KNOW ALL MEN BY THESE PRESENTS, That I, L. D. Mulligan, in consideration of One and no/100 (\$1.00) Dollars, to him paid by the Alaska Juneau Gold Mining Company, do hereby remise, release and forever quitclaim unto the said Alaska Juneau Gold Mining Company and unto its assigns all my right, title and interest in and to the following-described parcel of real estate, situate in the District of Alaska, to wit:

A certain water right, located August 1, 1910, on Gold Creek, near Juneau, Alaska, and described as follows: 20,000 miners inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water is to be diverted from said creek at a point indicated by this notice, posted on a tree, and about one mill from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

TO HAVE AND TO HOLD the same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said Alaska Juneau Gold Mining Company and to its assigns forever.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this second day of August, A. D. 1910.

L. D. MULLIGAN. Seal.

Signed, Sealed and Delivered in Presence of us as Witnesses:

C. W. RUSSEL.

R. G. DATSON. [1789]

**Plaintiff's Exhibit No. 25—Certificate of Notary  
Public Re Execution of Assignment of L. D.  
Mulligan to Alaska Juneau Gold Mining Co.**

United States of America,  
District of Alaska,—ss.

THIS CERTIFIES, That on this 2nd day of August, A. D. 1910, before me, the undersigned, a Notary Public in and for said District, personally appeared the within named L. D. Mulligan, known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal the day and year last above written.

JAMES CHRISTOE,

Notary Public, residing at Treadwell.

Notarial Seal.

Filed for record at 12 M., May 19, 1911. (Recorded in Book 22 of Deeds, page 558.)

G. C. WINN, Recorder.

I, John B. Marshall, United States Commissioner, ex-officio District Recorder, Juneau Recording District, Territory of Alaska, do hereby certify that the foregoing is a full, true and correct copy of the records of my office taken from Book 22 of Deeds, page 558.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner, ex-officio District Recorder.

Plffs.' Exhibit No. 25. Received in evidence Jul. 25, 1914. In Cause No. 1074-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [1790]

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**Plaintiff's Exhibit No. 26—Complaint in No. 803-A.**

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 803-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation, ALASKA TREADWELL  
GOLD MINING COMPANY, a Corporation,  
L. D. MULLIGAN, O. M. HARRY and R. G.  
DATSON,

Defendants.

**Complaint.**

Comes now the above-named plaintiff and complaining of the above-named defendants, and for cause of action alleges:

**I.**

That the said plaintiff is a corporation duly organized and existing under the laws of the District of Alaska and doing business in said District, and authorized to acquire, and has acquired, title to certain mining claims, water rights, etc., hereinafter referred to.

**II.**

That the Alaska-Juneau Gold Mining Company

**Plaintiff's Exhibit No. 25—Certificate of Notary  
Public Re Execution of Assignment of L. D.  
Mulligan to Alaska Juneau Gold Mining Co.**

United States of America,  
District of Alaska,—ss.

THIS CERTIFIES, That on this 2nd day of August, A. D. 1910, before me, the undersigned, a Notary Public in and for said District, personally appeared the within named L. D. Mulligan, known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal the day and year last above written.

JAMES CHRISTOE,

Notary Public, residing at Treadwell.

Notarial Seal.

Filed for record at 12 M., May 19, 1911. (Recorded in Book 22 of Deeds, page 558.)

G. C. WINN, Recorder.

I, John B. Marshall, United States Commissioner, ex-officio District Recorder, Juneau Recording District, Territory of Alaska, do hereby certify that the foregoing is a full, true and correct copy of the records of my office taken from Book 22 of Deeds, page 558.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner, ex-officio District Recorder.

Plffs.' Exhibit No. 25. Received in evidence Jul. 25, 1914. In Cause No. 1074-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [1790]

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**Plaintiff's Exhibit No. 26—Complaint in No. 803-A.**

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 803-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation, ALASKA TREADWELL  
GOLD MINING COMPANY, a Corporation,  
L. D. MULLIGAN, O. M. HARRY and R. G.  
DATSON,

Defendants.

**Complaint.**

Comes now the above-named plaintiff and complaining of the above-named defendants, and for cause of action alleges:

**I.**

That the said plaintiff is a corporation duly organized and existing under the laws of the District of Alaska and doing business in said District, and authorized to acquire, and has acquired, title to certain mining claims, water rights, etc., hereinafter referred to.

**II.**

That the Alaska-Juneau Gold Mining Company

and the Alaska-Treadwell Gold Mining Company, two of the above-named defendants, are both corporations doing business in the District of Alaska.

### III.

That the said plaintiff company is now, and at all times hereinafter mentioned has been, the owner and in possession of the following patented lode mining claims in the District of Alaska, viz.: The Jewel Lode Mining Claim, embraced in U. S. Survey No. 93; the Golden Fleece Lode Mining Claim, embraced in U. S. Survey No. 91; the Crown Point Lode Mining Claim, embraced in U. S. Survey No. 90; the Keystone Lode Mining Claim, embraced in U. S. Survey No. 59; the Taku Gold & Silver Lode Mining Claim, embraced in U. S. Survey No. 85; the Lotta Lode Mining Claim, embraced in U. S. Survey No. 87; the Grand [1791] Review Lode Mining Claim, embraced in U. S. Survey No. 92; also the following unpatented Lode Mining Claims, viz.: the Parish No. 1 Lode Mining Claim, the Parish No. 2 Lode Mining Claim, the Cape Horn No. 1 Lode Mining Claim and the Eureka Lode Mining Claim; all of which are located on Gold Creek, near Juneau, Alaska, and the patents and location notices thereof are on file and of record in the office of the Recorder of the Juneau Recording District, District of Alaska, that being the recording district in which said claims are located.

### IV.

That at the time of the location of said claims and ever since and now the ground or grounds contained within the exterior boundaries thereof, was and is valuable for quartz mining and contains quartz in



large quantities and of great value, and said mines have been mined and the ore therefrom milled upon said premises for many years last past, and said property is a large and valuable quartz mining property.

V.

That at the time of the location of said quartz mining claims and at the time of the patenting of said above-mentioned patented lode mining claims, there was, and there now is, flowing over and upon and through said claims a certain creek and natural stream of water known as Gold Creek, which adds greatly to the value of said mining claims as a property and the said water of said creek is now and for many years last past has been owned, possessed, appropriated and used by this plaintiff and the predecessors in interest and applied to use in the operation, mining, opening up and development of said mining claims, and the milling of the ores taken therefrom and contained thereon and therein; and all of said water of said creek is at all times necessary for said purposes; and that this plaintiff company is now, and at all times mentioned herein has been, the owner of all of said waters of said creek by reason of prior location, location and appropriation and user of the same, as well as entitled to the full and free natural flow of all the waters of said creek over, through, in and upon its said mining claims set forth, mentioned and described [1792] herein, and is entitled to the paramount use of said water for mining, milling and other beneficial uses and purposes as against the defendants mentioned herein, and all persons and corporations whomsoever.

## VI.

That on or about the 27th day of July, A. D. 1910, the above-named defendant, L. D. Mulligan, went upon the surface ground of the patented Lotta Lode Mining Claim owned by this plaintiff, and against the will and consent of this plaintiff, through which said Lotta Lode Mining Claim said Gold Creek flows, and posted a pretended location notice claiming 20,000 miner's inches of water of said creek, which is about the entire volume of said creek; all of which said actions on the part of said defendant Mulligan were against the will and consent of said plaintiff, and without any authority whatsoever, and that said defendants have since said time, against the will and consent of this plaintiff, and without any authority whatsoever, attempted to divert the water from said Gold Creek at said point of pretended posting of said notice on the said Lotta Lode Mining Claim, and they, and each of them, have been since said date continuously, wilfully and maliciously trespassing upon the property of this plaintiff company and particularly upon the Lotta Lode Mining Claim above mentioned, and the two Parish Lode Mining Claims and the Cape Horn Lode Mining Claim above described and referred to, and have been removing the timber therefrom and clearing up what appears to be a right of way for flume, ditch or pipe-line to convey the water from said Gold Creek from the point of posting said notice above referred to, in and over and upon the said last-mentioned lode claims, and off of and away from the premises and mining claims of this plaintiff company: all of which is and

has been against the will and consent of this plaintiff and without any authority whatever, and to the great and irreparable damage of said plaintiff, and if said defendants and each of them are not restrained from the wrongful acts herein referred to will continue to trespass upon the property of this plaintiff and divert from the premises of this plaintiff all the [1793] waters of said Gold Creek and thus prevent this plaintiff company from opening up, developing, operating and mining its said property, and deprive it of its ownership and paramount use of said waters of Gold Creek, which has been claimed, owned and used by this plaintiff for a long time prior to any claim made thereof by said defendants, or either, or any of them.

## VII.

This plaintiff is informed and believes the fact to be that the above-named defendants, nor either nor any of them, are not now, and never have been, the owner or possessed of any mining claims or property whatsoever below the property of the plaintiff company through which Gold Creek flows and that they nor any of said defendants have any beneficial use to apply said water to, but that said defendants, and each of them, are wrongfully and maliciously attempting to deprive this plaintiff company of said water and the use thereof in order to render the mining property and mining claims of the plaintiff herein referred to valueless and that the said defendants, and each of them, are attempting to wrongfully deprive and rob this plaintiff of its property and property rights without any authority whatsoever

and that said defendants will, unless restrained by this Court, continuously trespass upon the property of this plaintiff as aforesaid and deprive this plaintiff of its water and the use thereof for the purposes herein mentioned, and render the property and property rights herein referred to of this plaintiff valueless, to the great and irreparable damage of this plaintiff.

### VIII.

That said defendants are constantly and daily performing and doing the acts and things herein complained of, and have been so doing said acts and things since on or about the 27th day of July, A. D. 1910, and are threatening to carry out their said purpose and accomplish the things complained of herein, and will do so unless restrained immediately by this Honorable Court.

WHEREFORE, plaintiff prays: [1794]

1. That a preliminary injunction issue out of this court in this cause restraining and enjoining the said defendants and each of them, their servants, agents and employees during the pendency of this suit, from doing the acts and things herein complained of or threatened, or from entering upon any of the mining claims of this plaintiff company for the purposes herein complained of or in any manner taking from said Gold Creek or diverting therefrom any of the waters of the same from the premises and mining claims of this plaintiff company, and hereinbefore described.

2. That upon the final hearing and trial of this cause that said preliminary or temporary injunction

be made permanent and said defendants, and each of them, their agents, servants and employees be perpetually restrained from doing or committing any of the acts, things or matters herein complained of; and

3. For such other and further relief as to this Court seems equitable in the premises; and for plaintiff's costs and disbursements herein expended.

WINN & BURTON,  
Attorneys for Plaintiff.

United States of America,  
District of Alaska,—ss.

I, B. M. Behrend, being first duly sworn, on oath say: That I am the Secretary of the Plaintiff corporation in the above-entitled action; that I have read the foregoing complaint and know the contents thereof, and believe the same to be true; and make this verification on behalf of said company.

B. M. BEHREND.

Subscribed and sworn to before me this 25th day of Aug., 1910.

(Seal)

JNO. R. WINN,  
Notary Public of Alaska.

Plffs. Exhibit No. 26. Received in evidence Jul. 30, 1914. In Cause No. 1074-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [1795]













**Plaintiff's Exhibit No. 30—Majority Report of Committee of Miners of Harris Mining District Re Amendment to Mining Laws, etc.**

Harris Mining District, Feb. 18, 1882.

An adjourned meeting of the miners of this district was held in the house of Wm. Newcomer at 2 o'clock P. M. Minutes of the meeting Feb. 8 read and approved.

Committee appointed at the previous meeting to report amendments to the present code of laws governing water rights, etc., made the following reports:

**MAJORITY REPORTS.**

We, the undersigned committee, appointed by the chairman (Mr. T. W. Willson) of the annual meeting of the miners of Harris Mining District for the purpose of draughting amendments to the present mining laws of the district, to report to an adjourned meeting to be held at the residence of W. H. Newcomer on the 18th February, 1882, have the honor to respectfully submit the following for ratification.

Article 1st, Section 1st. The right to use the running water flowing in a river or stream or down a canon or ravine, may be acquired by appropriation.

Article 2nd. The appropriation must be for some useful or beneficial purpose and when the appropriators or his successor in interest ceases to use it for such a purpose, the right ceases.

Article 3rd. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch,

flume, pipe or aqueduct by which the diversion is made to places beyond that where the first use was made.

Article 4th. The water appropriated may be turned into the channel of another stream and mingled with its water and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished.

Article 5th. As between appropriators, the one first in time is the one first in right.

Article 6th. A person desiring to appropriate water must [1798] post a notice in writing, in a conspicuous place, at the point of intended diversion, stating therein;

First. He claims the water there flowing to the extent of (giving the number) inches, measured under a four inch pressure.

Second. The purpose for which he claims it, and the place of intended use.

A copy of the notice must within ten (10) days after it is posted be recorded in the Books kept by the Recorder of the District.

Article 7th. Within twenty days during the working season after the notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently, and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Article 8th. By "completion" it is meant conducting the water to the place of intended use.

Article 9th. By a compliance with the above rules



the claimants' right to the use of the water relates back to the time the notice was posted.

Article 10th. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.

Article 11th. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

~~Article 1st, Section 2nd.~~

Plts. Exhibit No. 30. Rec'd in Evidence July 31, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy.  
[1799]

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**Plaintiff's Exhibit No. 31—Minority Report of Committee of Miners of Harris Mining District Re Amendment of Mining Laws, etc.**

**MINORITY REPORT.**

1st. All disputes shall be settled by miners meetings or by arbitration.

2nd. Where a party has a prior location to a ditch, he is entitled to protection on said ditch, to prohibit parties from injuring said ditch by dumping tailings.

(Signed) P. McGLINCHY.

On motion, the reports of the committee were received.

It was moved that the reports of the committee be considered by sections. Carried.

The majority report was then taken up.

Section 1st. Articles First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Eleventh were adopted as read. Article Sixth was amended so as to read "six inch pressure" instead of four inch pressure.

Section 2nd. Articles First and Second were adopted as read. Article Third was amended by adding "and the Recorder when serving shall receive the same pay as arbitrators.

The Minority report was then taken up and the following adopted as Article 12 of Section 1st of the Amendments:

"When a party has a prior location to a ditch, he is entitled to protection on said ditch, to prohibit parties from injuring said ditch by dumping tailings."

On motion, the reports adopted as a whole, as amended.

On motion, meeting adjourned.

T. A. WILLSON,

R. T. HARRIS,

Chairman.

Secretary.

Pltf's. Exhibit No. 31. Rec'd in Evidence July 31, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy.  
[1800]

**Plaintiff's Exhibit No. 33—Local Mining Laws of  
Harris Mining District, Alaska.**

**LOCAL  
MINING LAWS  
of  
HARRIS MINING DISTRICT,  
ALASKA.**

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**DELANEY & GAMEL,**  
Attorneys-at-law,  
Juneau, Alaska.

[1801]

**LOCAL MINING LAWS FOR HARRIS MINING  
DISTRICT.**

An adjourned meeting of the miners of Harris District was convened at the house of P. McGlinchy at 12: 0 p. m.

The minutes of the previous meeting were read and approved.

The following preamble and resolution was then read by T. A. Wilson and passed:

WHEREAS, None but bona fide American citizens have a right to participate in making laws for the government of American citizens and but few of those present being able to prove their citizenship.

Therefore be it resolved, that as a proof of citizenship, all persons wishing to participate in this meet-

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ing be required to make oath to the same before an officer competent to administer oath.

The following resolution was then passed:

Resolved, That it is the wish of the miners present that Lieutenant Commander C. H. Rockwell, U. S. N., be requested to administer the oath that they are citizens of the United States, to those present who desire to make the same.

Lieutenant Commander C. H. Rockwell then administered the following oath to the following named persons:

I solemnly and sincerely swear that I am an American citizen, so help me God.

George F. Pilz,	John Dix,
Hugh Campbell,	T. A. Wilson,
M. H. Gibbons,	R. Dixon,
James Rosewall,	John Prior,
Frank McMahon,	M. J. Hibbard,
J. Thompson,	Henry Coon,
S. Lewis,	James Fallon,
C. Brown,	F. Martin,
J. H. Turnbull,	D. Foster,
J. D. Sagemiller,	M. Hosford,
C. W. Forrest,	John Olds,
M. Dunn,	J. McKinnon,
J. T. Kernon,	J. B. Newton,
W. M. Bennett,	W. Pierce,
J. A. Ring,	J. O. Nicholson,

N. R. Usher

The committee appointed at the previous meeting to draft a code of laws for the government of this mining district presented the following preamble

and laws which were adopted.

WHEREAS, Valuable mines having been discovered by Richard Harris and Joseph Juneau on the main land of Alaska, during the month of October, 1880, and no legal code of local laws having been made, the miners residing near these discoveries now think it prudent to have a code of local laws in accordance with the custom of miners and the laws of the United States, do now enact the following articles:

#### ARTICLE I.

This mining district shall be called the Harris Mining District and its boundary lines shall be as follows, viz: Commencing at the Auk Indian village and running north east true to the boundary line of Alaska and British Columbia, thence along said boundary line to where it intersects the Takou river, thence down the Takou River and Takou inlet to Stephen's passage, thence along the Stephen's passage to point of beginning

#### ARTICLE II.

Claims shall be divided into four classes, viz: Placer, vein or lode, mill sites and water privileges

#### ARTICLE III.

SECTION 1.—Placer claims shall be sub divided into three classes, viz: Creek or river, gulch or ravine, and hill.

SECTION 2.—Creek or river claims shall be two hundred feet in length and shall extend from rimrock to rimrock in width.

SECTION 3.—Gulch or ravine claims shall be two hundred feet in length and one hundred feet on each

side of the center of the gulch.

SECTION 4.—Hill claims shall be two hundred feet in front, commencing where creek or river claims leave off and running back to the summit, or a distance not exceeding one thousand feet.

SECTION 5.—Each discoverer of new diggings shall be entitled to two hundred feet for discovery and two hundred feet by pre-emption, in each river, creek, gulch, or ravine, that he or they may find gold on in paying quantities, providing the number is not to exceed four.

SECTION 6.—A miner is entitled to hold, if he represents according to the laws of the district, one river or creek claim, one bench or hill claim, and one gulch or ravine claim by pre-emption on each creek or river in the district; a miner can locate ground for not more than two bona fide partners, and they must be residents of the district at the time of location.

SECTION 7.—All claims shall be distinctly marked by placing [1802] stakes at each corner and giving such description by reference to some natural object, or permanent monument that the claim can be easily found and its boundary lines readily traced.

SECTION 8.—No person or company shall be allowed to dump tailings or other debris on the adjoining company's ground without the consent of said company; each miner or company shall be entitled to drainage through the adjoining ground.

SECTION 9.—The working season shall be from the first day of June to the first day of October. All placer claims must be represented during this time unless just reasons can be given for laying over claim



as provided in these articles.

SECTION 10.—Placer claims may be laid over during the working season for the following reasons: Sickness of claimants lack of water or continued heavy floods in the rivers. Where a claim is laid over the claimant must place a notice on the claim stating the cause of laying over and must file a duplicate of the same with the district recorder.

SECTION 11.—All placer claims that have been duly represented during the working season are laid over from the first of October until the following June.

All disputes concerning placer mining ground may be settled by arbitration.

#### ARTICLE IV.

Vein or lode claims shall be located and worked in accordance with the mining laws of the United States.

#### ARTICLE V.

Mill sites shall be located on non mineral land according to the laws of the United States.

#### ARTICLE VI.

Water privileges may be located, but such locations shall not conflict with the interest of river miners.

#### ARTICLE VII.

A recorder shall be elected annually by the resident miners of the district. It shall be his duty to keep a true record of all location of claims, transfers or lay over notices. The record shall be kept in the most settled part of the district and open for inspection.

#### ARTICLE VIII.

Vein or lode claims shall be recorded within twenty

days after location and placer claims shall be recorded within ten days after location.

ARTICLE IX.

A recorder's fees shall be one dollar and fifty cents (\$1.50) for each record of placer claim, transfer or lay-over notice, and two dollars and fifty cents (\$2.50) for each record of vein or lode claim mill site or water privileges or transfer of same.

ARTICLE X.

A miners' meeting can be called by the recorder of the district at the request of twenty or more miners, but he must give at least ten days' notice, and said notices must be posted in at least three conspicuous places in the district.

The following resolution was then passed: That we hereby recognize that the records as kept by R. Harris as the legal records of this district and all claims recorded in said record book be considered as legally recorded and that said records be placed in the hands of the recorder-elect as soon as qualified.

Thos A. Wilson,	M. Dunn,
Frank McMahon,	John Olds,
S. Lewis,	N. R. Usher,
W. Pierce,	J. H. Turnbull,
M. J. Hibbard,	W. M. Bennett,
J. Ring,	John Prior,
M. H. Gibbons,	J. D. Sagemiller,
B. Newton,	Henry Coon,
J. Thompson,	Wm. Hosford,
J. O. Nicholson,	John Dix,
James Rosewall,	R. Dixon,

C. W. Forrest, D. Foster,  
James Fallon, C. H. Rockwell,  
George E. Pilz, Chairman.

HARRIS MINING DISTRICT,

February 18, 1882.

An adjourned meeting of the miners of this district was held in the house of Wm. Newcomer at two o'clock p. m.

Minutes of the meeting of February 8th read and approved. Committee appointed at the previous meeting to report amendments to the present code of laws governing water rights, etc., made the following reports.

MAJORITY REPORTS.

We, the undersigned committee appointed by the chairman (Mr. T. A. Wilson) of the annual meeting of the miners of Harris Mining District for the purpose of drafting amendments to the present mining laws of the district, to report to [1803] an adjourned meeting to be held at the residence of W. H. Newcomer on the 18th of February, 1882, have the honor to respectfully submit the following for ratification:

Article I.

Section 1.—The right to use the running water flowing in a river or stream, or down a canyon or ravine, may be required by appropriation.

Article II.

The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose the right ceases.

Article III.

The person entitled to the use may charge the place of diversion, if others are not injured by such change and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to place beyond that where the first use was made.

Article IV.

A water appropriation may be turned into the channel of another stream and mingled with its waters and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished.

Article V.

As between appropriators, the one first in time is the one first in right.

Article VI.

A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

First—He claims the water there flowing to the extent of (giving the number) inches measured under a four inch pressure.

Second—The purpose for which he claims it, and the place of intended use.

A copy of the notice must within ten (10) days after it is posted be recorded in the books kept by the recorder of the district.

Article VII.

Within twenty days, during the working season, after the notice is posted, the claimant must commence the excavations or construction of the works in which he intends to divert the water, and must

prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

#### Article VIII.

By "completion" it is meant conducting the waters to the place of intended use.

#### Article IX.

By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.

#### Article X.

A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.

#### Article XI.

Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes effect, and within twenty days thereafter proceed as in this title provided, or their right ceases.

#### Article I.

Section 2.—To have article 3, section 12, to read: All disputes concerning placer mining ground and water rights shall be settled by arbitration during the absence of civil law, and such decision to be final.

#### Article II.

It shall be the duty of the recorder of the district to take the books of records and laws upon the ground in dispute, if called upon.

Article III.

All arbitrators must be paid by the parties who are the losers of the case in dispute at the rate of five dollars per day, or any part thereof.

[Signed.]

R. T. HARRI,  
PHILLIP STARR,  
WILLIAM HOSFORD,  
S. LEWIS,

MINORITY REPORT.

First—All disputes shall be settled by a miners meeting or by arbitration.

Second—Where a party has a prior location to a ditch, he is entitled to protection on said ditch to prohibit parties from injuring said ditch by dumping tailings.

[Signed.]

P. M. McGLINCHY. [1804]

On motion the reports of the committee were received. It was moved that the reports of the committee be considered by sections. Carried.

The majority report was then taken up.

Section 1.—Articles first, second, third, fourth, fifth, seventh, eighth, ninth, tenth and eleventh were adopted as read Article sixth was amended so as to read “six inch pressure instead of four inch pressure.”

Section 2.—Articles first and second were adopted as read Article third was amended by adding “and the recorder when serving shall receive the same pay as arbitrators.”

The minority report was then taken up and the following adopted as article 12 of section 1 of the amendments:



“When a party has a prior Location to a ditch, he is entitled to protection on said ditch to prohibit parties from injuring said ditch by dumping tailings.”

On motion the reports were adopted as a whole as amended.

On motion meeting adjourned.

T. A. WILSON, Chairman.

R. T. HARRIS, Secretary.

District of Alaska,  
Harris Mining District,—ss.

I, W. R. Hoyt, mining and district recorder, within and for said Harris Mining District, do hereby certify that the foregoing copy of the “Miners’ Rules, Regulations and Local Laws” of the miners of said Harris Mining District, is a true and correct copy of the original “Miners’ Rules, Regulations and Local Laws” as the same appear on record in my office in book “A of Records” of the records of said Harris Mining District.

And I do further certify that said above mentioned “Miners’ Rules, Regulations and Local Laws,” are the identical “Rules, Regulations and Local Laws,” now in force in and observed by the miners of said Harris Mining District.

In testimony whereof I have hereunto set my hand and official seal this 10 day of March, 1891.

W. R. HOYT,  
District and Mining Recorder. [1805]

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**Plaintiff's Exhibit No. 34—Local Mining Laws of  
Harris Mining District, Alaska.**

WM. BORBRIDGE,

Plffs. Ex. #34 for Agent J. T. Reed Dep.

7/31/14

LOCAL  
MINING LAWS  
of  
HARRIS MINING DISTRICT,  
ALASKA.

Published by  
JOHN G. HEID & G. W. GARSIDE,  
Juneau, Alaska.

[1806]

Wm. Borbridge.

LOCAL MINING LAWS OF HARRIS MINING  
DISTRICT, OF ALASKA.

Harrisburg, Feb. 9, 1881.

An adjourned meeting of the miners of Harris District was convened at the house of P. McGlinchy at 12:30 p. m.

The minutes of the previous meeting were read and approved.

The following preamble and resolution was then read by T. A. Wilson and passed:

WHEREAS, None but bona fide American citizens have a right to participate to making laws for the government of American citizens, and but few of those present being able to prove their citizenship,

Therefore be it resolved that as a [1807] [2]  
proof of citizenship, all persons wishing to partici-

pate in this meeting be required to make oath to the same before an officer competent to administer oath.

The following resolution was then passed:

Resolved, That it is the wish of the miners present that Lieutenant Commander C. H. Rockwell, U. S. N., be requested to administer the oath that they are citizens of the United States, to those present who desire to take the same.

Lieutenant Commander C. H. Rockwell then administered the following oath to the following named persons:

I solemnly and sincerely swear that I am an American citizen, so help me God.

Geo. E. Pilz,	John Dix,
Hugh Campbell,	T. A. Wilson,
M. H. Gibbons,	R. D. Dixon, [3]
James Rosewall,	John Prior,
Frank McMahan,	M. J. Hibbard,
J. Thompson,	Henry Coon,
S. Lewis,	Jas. Fallon,
C. Brown,	F. Martin,
J. H. Turnbull,	D. Foster,
J. D. Sage Miller,	M. Hosford,
C. W. Forrest,	John Olds,
M. Dunn,	J. McKinnon,
J. T. Kernon,	J. B. Newton,
W. M. Bennett,	W. Pierce,
J. A. Ring,	J. O. Nicholson,

N. R. Usher.

The committee appointed at the previous meeting to draft a code of laws for the government of this

mining district, presented the following preamble and laws which were adopted:

WHEREAS, Valuable mines having been discovered by Richard Harris and Joseph Juneau [4] on the [1808] main land of Alaska, during the month of October, 1880, and no legal code of local laws having been made, the miners residing near these discoveries now think it prudent to have a code of local laws in accordance with the custom of miners and the laws of the United States, do now enact the following articles:

#### ARTICLE I.

This mining district shall be called the Harris Mining District, and its boundary lines shall be as follows, viz: Commencing at the Auk Indian village and, running north-east true to the boundary line of Alaska and British Columbia, thence along said boundary line to where it intersects the Takou River, thence down the Takou River and Takou Inlet to Stephen's Passage, thence along the Stephen's Passage to point of beginning.

#### ARTICLE II. [5]

Claims shall be divided into four classes, viz: Placer, vein or lode, mill sites and water privileges.

#### ARTICLE III.

Section 1.—Placer claims shall be sub-divided into three classes, viz: Creek or river, gulch or ravine, and hill.

Section 2.—Creek or river claims shall be two hundred feet in length and shall extend from rimrock to rimrock in width.

Section 3.—Gulch or ravine claims shall be two hundred feet in length and one hundred feet on each side of the center of the gulch.

Section 4.—Hill claims shall be two hundred feet in front, commencing where creek or river claims leave off and running back to the summit, or a distance not exceeding one thousand feet. [1809] [6]

Section 5.—Each discoverer of new diggings shall be entitled to two hundred feet for discovery and two hundred feet by pre-emption, in each river, creek, gulch, or ravine, that he or they may find gold on in paying quantities, providing the number is not to exceed four.

Section 6.—A miner is entitled to hold, if he represents according to the laws of the district, one river or creek claim, one bench or hill claim; and one, gulch or ravine claim by pre-emption on each creek or river in the district; a miner can locate ground for not more than two bona fide partners, and they must be residents of the district at the time of location.

Section 7.—All claims shall be distinctly marked by placing stakes at each corner and giving such description by reference to some natural object, or permanent monument that the claim can be [7] easily found and its boundary lines readily traced.

Section 8.—No person or company shall be allowed to dump tailings or other debris on the adjoining company's ground without the consent of said company's each miner, or company shall be entitled to drainage through the adjoining ground.

Section 9.—The working season shall be from the

first day of June to the first day of October. All placer claims must be represented during this time, unless just reasons can be given for laying over claim as provided in these articles.

Section 10.—Placer claims may be laid over during the working season for the following reasons:

Sickness of claimants, lack of [1810] [8] water or continued heavy floods in the rivers.

Where a claim is laid over the claimant must place a notice on the claim, stating the cause of laying over, and must file a duplicate of the same with the District Recorder.

Section 11.—All placer claims that have been duly represented during the working season are layed over from the first of October until the following June.

All disputes concerning placer mining ground may be settled by arbitration.

#### ARTICLE IV.

Vein or lode claims shall be located and worked in accordance with the mining laws of the United States.

#### ARTICLE V.

Mill sites shall be located on non-mineral land, according to the laws of the United [9] States.

#### ARTICLE VI.

Water privileges may be located, but such locations shall not conflict with the interests of river miners.

#### ARTICLE VII.

A Recorder shall be elected annually by the resident miners of the district. It shall be his duty to



keep a true record of all location of claims, transfers, or lay-over notices. The record shall be kept in the most settled part of the district and open for inspection.

#### ARTICLE VIII.

Vein or lode claims shall be recorded within twenty days after location, and placer claims shall be recorded within ten days after location.

#### ARTICLE 9.

The recorder's fees shall be One Dollar and Fifty Cents (\$1.50) for [1811] each record of [10] placer claim, transfer or lay-over notice, and Two Dollars and Fifty Cents (\$2.50) for each record of vein or lode claim, mill site, or water privileges or transfer of same.

#### ARTICLE 10.

A miner's meeting can be called by the recorder of the district at the request of twenty or more miners, but he must give at least ten days notice, and said notices must be posted in at least three conspicuous places in the district.

The following resolution was then passed: That we hereby recognize that the records as kept by R. Harris as the legal records of this district, and all claims recorded in said record book be considered as legally recorded, and that said records be placed in the hands of the Recorder-elect as soon as qualified.

Geo. E. Pilz, Chairman. [11]

Thos. A. Wilson,	N. R. Usher,
Frank McMahon,	J. H. Turnbull,
S. Lewis,	W. M. Bennett,
W. Pierce,	John Prior,
M. J. Hibbard,	S. D. Sage Miller,
J. A. Ring,	Henry Coon,
M. H. Gibbons,	Wm. Hosford,
B. Newton,	Jno. Dix,
J. Thompson,	R. Dixon,
J. O. Nicholson,	C. W. Forrest,
James Rosewall,	Jas. Fallon,
M. Dunn,	D. Foster,
John Olds,	C. H. Rockwell,

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## HARRIS MINING DISTRICT

February 18, 1882.

An adjourned meeting of the miners of this district was held in the house of Wm. Newcomer at two o'clock p. m.

Minutes of the meeting of February [1812] [12] 8th read and approved. Committee appointed at the previous meeting to report amendments to the present code of laws governing water rights, etc., made the following reports:

### MAJORITY REPORTS.

We, the undersigned committee appointed by the chairman (Mr. T. A. Wilson) of the annual meeting of the miners of Harris Mining District, for the purpose of drafting amendments to the present mining laws of the district, to report to an adjourned meeting to be held at the residence of W. H. Newcomer

on the 18th of February, 1882, have the honor to respectfully submit the following for ratification:

#### ARTICLE I.

SECTION 1.—The right to use the running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation. [13]

#### ARTICLE II.

The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

#### ARTICLE III.

The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch flume pipe, or aqueduct by which the diversion is made to place beyond that where the first use was made.

#### ARTICLE IV.

The water appropriated may be turned into the channel of another stream and mingled with its waters and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished. [1813]

#### [14] ARTICLE V.

As between appropriators, the one first in time is the one first in right.

#### ARTICLE VI.

A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

First.—He claims the water there flowing to the

extent of (giving the number) inches, measured under a four inch pressure.

Second.—The purpose for which he claims it, and the place of intended use.

A copy of the notice must within ten (10) days after it is posted be recorded in the books kept by the Recorder of the district.

#### ARTICLE VII.

Within twenty days, during the working season, after the notice is posted, the claimant must [15] commence the excavations or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

#### ARTICLE VIII.

By “completion” it is meant conducting the waters to the place of intended use.

#### ARTICLE 9.

By a compliance with the above rules, the claimant’s right to the use of the water relates back to the time the notice was posted.

#### ARTICLE 10.

A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith. [1814]

#### [16] ARTICLE 11.

Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes

effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

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## ARTICLE I.

SECTION 2.—To have article 3, section 12, to read: All disputes concerning placer mining ground and water rights shall be settled by arbitration during the absence of civil law, and such decision to be final.

## ARTICLE II.

It shall be the duty of the Recorder of the district to take the books of records and laws upon the ground in dispute, if called upon.

## ARTICLE III. [17]

All arbitrators must be paid by the parties who are the losers of the case in dispute at the rate of Five Dollars per day, or any part thereof.

[Signed.]

R. T. HARRIS,  
PHILLIP STARR,  
WILLIAM HASFORD,  
S. LEWIS.

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## MINORITY REPORT.

First.—All disputes shall be settled by a miner's meeting or by arbitration.

Second.—Where a party has a prior location to a ditch, he is entitled to protection on said ditch to prohibit parties from injuring said ditch by dumping tailings.

[Signed.]

P. MCGLINCHY.

On motion, the reports of the committee were received. It was moved that the reports of the com-

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[18] mittee [1815] be considered by sections.  
Carried.

The majority report was then taken up.

SECTION 1.—Articles first, second, third, fourth, fifth, seventh, eighth, ninth, tenth and eleventh were adopted as read. Article sixth was amended so as to read “six inch pressure instead of four inch pressure.”

SECTION 2.—Articles first and second were adopted as read. Article third was amended by adding “and the Recorder when serving shall receive the same pay as arbitrators.”

The minority report was then taken up and the following adopted as article 12 of section 1 of the amendments:

“When a party has a prior location to a ditch, he is entitled to protection on said ditch to pro- [19]  
hibit parties from injuring said ditch by dumping tailings.”

On motion the reports were adopted as a whole as amended.

On motion meeting adjourned.

T. A. WILSON, Chairman.

R. T. Harris, Secretary. [1816]



District of Alaska,

Harris Mining District,—ss.

I, John G. Heid, mining and district recorder, within and for said Harris Mining District, do hereby certify that the foregoing copy of the “Miners’ Rules, Regulations and Local Laws” of the miners of said Harris Mining District, is a true and correct copy of the original “Miners Rules, Regulations and Local Laws” as the same appear on record in my office in book, “A of Records” of the records of said Harris Mining District. [1816]

[20] And I do further certify that said above mentioned “Miners Rules, Regulations and Local Laws,” are the identical “Rules, Regulations and Local Laws” now in force in and observed by the miners of said Harris Mining District.

In testimony whereof I have hereunto set my hand and official seal this 9th day of May, 1886.

[Seal.]

JOHN G. HEID,

District and Mining Recorder. [1817]

















**Plaintiff's Exhibit No. 38—Report of Ebner Gold  
Min. Company.**

**REPORT OF EBNER GOLD MING COMPANY  
PROPERTY.**

Mr. Joseph MacDonald,

Douglas Island, Alaska.

Pursuant to your request, we herewith enclose you a Report, together with other data as requested by you, of the Ebner Gold Mining Company property.

**PROPERTY:**

The property of the Ebner Gold Mining Company consists of seven patented lode claims comprising over 100 acres of ground, two unpatented lode claims and one unpatented placer claim. The workings and ledges are all on the patented ground.

The title to the above property is perfect and vested in this Company, free and clear from all encumbrances, and are accurately shown upon maps executed by Mr. Wythe Denby, M. E. and can be seen at the Company's office.

**LOCATION:**

This property is located in the Harris Mining District, about two miles from Juneau, on gold Creek, at an elevation of about 750 feet, above sea level at the old mill, and 400 feet above sea level at the new mill. A good wagon road leads directly to the property from Juneau. The City of Juneau is the main distributing point for all Southeastern Alaska and has good steamer service from Puget Sound and San Francisco, and mild climate permitting of constant operations winter and summer.

**GEOLOGY:**

The rocks of this district are slate, greenstone, granite and quartzite. The slate and greenstone predominate, lying in beds tilted from the horizontal at angles varying from  $45^{\circ}$  to  $80^{\circ}$  from perpendicular. The general strike of these rocks is northwest and Southeast, and the dip is to the Northeast.

The lodes in the Ebner Gold Mining Company's property are apparently [1819] diorite dykes ly-

(2)

ing between the slate footwall and the greenstone hanging wall conforming to the general dip and strike of the formation. The vein formation consists of a network of quartz stringers running through the vein rock. These quartz stringers are mineralized carrying pyrites, zinc blende and galena. The vein rock is all mineralized and carries value. In mining the whole vein is broken down and sent to the mill where it is dumped over grizzlies. The fine ore all goes direct to the ore bin; the coarse rock is subject to a simple hand sorting one man being employed to throw out the larger pieces of poor rock, at the same time attending to the rock breaker. With a large mill this sorting process would be unnecessary.

There are at present at least six separate veins known to exist on this property. Three of these claims have been developed to some extent and will be referred to, in this report as veins Nos. 1, 2 and 3. Veins Nos. 1 and 2 have considerable development done on them, as shown on the map. Vein No. 2 has been largely developed and has been the principal producer of this Company. The other three veins

are undeveloped and are only mentioned as being of probable value.

**Vein No. 1**—This vein is the most southwest vein shown on the map. It lies between a greenstone hanging wall and a black slate footwall, showing a selvedge of black graphitic slate on both walls. It dips to the northeast about  $75^{\circ}$  from horizontal and strikes northwest and southeast. It is 18 feet wide as shown upon the workings upon it. About one third of the values in this vein lie in the concentrates, the balance being free milling.

**Vein No. 2**—This is the middle vein shown on the map. The development is shown plainly on the map and sections. The hanging wall is greenstone, the footwall gray slate. It dips  $75^{\circ}$  from the horizontal to the northeast and strikes northwest and southeast. It averages 30 feet wide. This vein is opened up for about 400 feet in the upper level. It is also opened up by a tunnel 220 feet below the upper level, for 450 feet, showing permanence in depth. The ore at this depth is apparently [1820] as good in

(3)

value and as wide as that milled above. The ore in this vein is free milling.

**Vein No. 3**—This vein is similar to No. 1, but it is not sufficiently developed to tell much about it. It has, however, very good surface showings and can be traced for several hundred feet. Vein No. 1 has surface workings for over 1200 feet; and Vein No. 2 has underground and surface workings for over 2000 feet in length.

The veins are wide and need no timbering as the

ground stands exceedingly well. There has never been a serious accident from falling ground in this mine although some of the stopes are over 40 feet wide and have stood without timbers for five years.

#### ORE IN SIGHT:

The ore at present available for milling is confined to Veins Nos. 1 and 2. It would be difficult to estimate the amount in sight in Vein No. 1 without further development; but without question a good production could be maintained there. In vein No. 2 between the lower and upper tunnels there is at least five years' ore in sight for a 40 stamp mill, and if the ore in the lower tunnel maintains *it* present width and value to the end of the Upper levels there is at least ten years' reserve for an output of 200 tons daily, in sight. As the lower tunnel is advanced on the vein, depth beneath the surface is gained rapidly and the reserve will be largely increased.

#### PROPOSED DEVELOPMENT:

As shown on the maps, a lower tunnel is proposed to be driven by this Company from the top of the new mill cutting the formation at right angles, which will tap all the ledges on the property 230 feet below the present tunnel. A distance of 600 feet will cut the first, or Vein No. 1; and 1200 to 1300 feet will tap all the ledges. If the ore bodies are found at this depth to be permanent—and the present development practically insures this result—the ore reserves will be very large indeed and the veins can be worked for many years without sinking, hoisting or pumping. [1823]



(4)

## EQUIPMENT:

The present equipment consists of buildings as follows: 1 boarding house, office and store room with accommodations for 50 men; assay office, melting room, blacksmith shop, powder house, etc.; 1 mill building containing 15 stamps, rock breaker, 4 Frue vanners, amalgam barrel, boiler and all necessary appurtenances; 1 new mill building large enough for 40 stamps, so constructed that the lower end will be used for compressor, dynamos and machine shop; the second for Frue vanners; the third for batteries. In this building is installed one duplex direct connected, and driven by 12-ft. Tuthill water wheel, 6-drill compressor. The building is all ready for the machinery. The property is also equipped with all necessary tools including drills, air lines and all necessary tools for operating the mines.

## WATER POWER:

The title to all the water running in Gold Creek is absolutely vested in this Company. The quantity of water for 8 months in the year is at least 4000 miners' inches. The lowest stage of water in the last six years at any time during the coldest weather has been 740 miner's inches. This water is conveyed by a 4-ft. double lined flume from what is called the "upper dam" to both the old and new mill. The head or pressure from tank to new mill is 246 feet; at the old mill 117 feet. At present the water is divided, being used at the old mill for operating the stamps and at the new mill for operating the compressor. As soon as the new mill is completed all water

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will be diverted and used under the high head. The maps in the office of this Company show the flumes, dams, water lines; also the difference in elevation.

The above is a copy of the report made by Wythe Denby June 1st, 1901.

The Ebner Gold Mining Company offers this property for sale at the following price and terms: The net price for the entire property to be Seven hundred and fifty thousand dollars. The first payment of Two hundred and fifty thousand dollars to be made on or before April 25th, [1824] 1902.

(5)

The second payment of Two hundred and fifty thousand dollars to be made on or before January 1st, 1903.

The third and last payment of Two hundred and fifty thousand dollars to be made on or before May 1st, 1903.

Tests made at different times for the last five years from different portions of the property have convinced this Company that they have a very large mine of medium grade ore; and that in order to make it profitable it will require a large mill, and this Company has concluded to do the following: That unless negotiations are closed within the time stated this Company proposes to not only immediately install the machinery in the new mill building, but to immediately commence work and extend the mill site for the installation of 60 stamps more, making a hundred stamp mill instead of forty. This will require special arrangements and is one of the reasons why

we offer the property for sale, and the principal reason why negotiations must be closed within the time stated.

We will not touch upon values as that is one thing that can be easily determined by an examination of the property.

Yours respect.,

EBNER GOLD MINING CO.,

WM. M. EBNER, President.

B. M. BEHREND, Secretary. [1825]

**Plaintiff's Exhibit No. 39—Mortgage or Deed of  
Trust, Dec. 15, 1907, The California-Nevada Co.  
to The Standard Trust Co. of New York et al.  
THE CALIFORNIA-NEVADA COPPER  
COMPANY**

to

**THE STANDARD TRUST COMPANY OF NEW  
YORK and EDWARD M. F. MILLER, Trustee.**

**Mortgage or Deed of Trust.**

**Dated December 15, 1907.**

INDENTURE, made at the City of New York, in the State of New York, the fifteenth day of December, one thousand nine hundred and seven, between The California Nevada Copper Company, a corporation of the State of Maine, hereinafter called the "Mortgagor," the party of the first part, and The Standard Trust Company of New York, a corporation of the State of New York, and Edward M. F. Miller, as Trustee, hereinafter called the "Trustees," party of the second part, said Trust Company being also hereinafter called the "Trust Company," and said Miller, the "Individual Trustee";

WHEREAS, the mortgagor has deemed it necessary for its lawful corporate purposes to issue its bonds in the aggregate amount of Two Million five hundred thousand dollars (\$2,500,000) of principal, substantially in the form hereinafter stated (such bonds numbered 1 to 1500 inclusive, being for \$1000 each; bonds numbered 1501 to 3000 inclusive, being for \$500 each; and bonds numbered 3001 to 5500 in-

clusive, being for \$100 each), and to secure said bonds by the execution hereof has been duly authorized by the board of directors of the mortgagor;

And, WHEREAS, said bonds, with the interest coupons and Trustee's certificate therein provided for, are to be in substantially the following form:

THE CALIFORNIA-NEVADA COPPER  
COMPANY:

First Mortgage Seven per cent. Gold Bond No.  
—— \$——.

For value received The California-Nevada Copper Company promises to pay bearer, or in case this bond is registered, to the registered owner hereof, —— dollars (\$——) in gold [1826] coin of the United States of America of the present standard at the office or agency of the Company in the City of New York, on the 15th day of December, in the year one thousand nine hundred and twelve, and to pay interest thereon in like gold coin, at the rate of seven per cent per annum, from the date hereof, semi-annually, on presentation and surrender at said office or agency of the annexed coupons as they become due, on the fifteenth days of June and December of each year, until such principal shall be paid. Principal and interest are payable without deduction for taxes, assessments, or other government charges of any kind, which the company may be required to pay or to retain therefrom, by virtue of any present or future law or requirement.

This bond is one of a series of fifty-five hundred bonds of like import, except as to amount, numbered

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consecutively from 1 to 5500, the aggregate principal of which is \$2,500,000 and this bond is entitled to the benefits, and subject to the provisions of a mortgage or deed of trust of even date herewith, made by the company to The Standard Trust Company of New York and Edward M. F. Miller as Trustee, to secure the payment of said bonds.

The principal of said bonds may become due in case of default as to interest, or of sale under said mortgage, as provided in said mortgage, to which reference is made for complete statement. Said bonds are convertible at any time before maturity at the option of the holder into stock of the company as provided in said mortgage.

This bond may at any time be registered on the books of the company at its office or agency in the City of New York and the registration noted hereon, after which no valid transfer hereof can be made except on said books, until after registered transfer to bearer, but registration shall not restrain negotiability of the coupons by delivery merely.

This bond shall not be valid until the certificate endorsed hereon shall have been signed by the said Trust Company. [1827]

IN WITNESS WHEREOF, said The California Nevada Copper Company has caused its corporate seal to be affixed hereto, attested by its secretary, or assistant secretary, and these presents to be signed in its name by its President or Vice-President,



this fifteenth day of December, one thousand nine hundred and seven.

THE CALIFORNIA NEVADA COPPER  
COMPANY

By \_\_\_\_\_,  
President.

Attest: \_\_\_\_\_,  
Secretary.

(Coupon)

On the fifteenth day of —, 19—, The California Nevada Copper Company will pay to bearer — dollars (\$—) in gold coin of the United States of America at its office or agency in the City of New York, being six months interest then due upon its first mortgage bond No. —.

THE CALIFORNIA-NEVADA COPPER  
COMPANY,

By \_\_\_\_\_,  
Treasurer.

(Trustee's Certificate.)

This bond is one of the series of bonds described in the mortgage or deed of trust in this bond referred to.

THE STANDARD TRUST COMPANY OF  
NEW YORK,

By \_\_\_\_\_.

NOW, THEREFORE, this indenture witnesseth, that the mortgagor in consideration of the premises, and of the sum of one dollar, to it paid, the receipt whereof is hereby acknowledged, in order to secure the payment of the principal and interest on said

bonds, according to the terms thereof, and of these presents, hath granted, bargained, sold, assigned conveyed transferred and confirmed, and by these presents doth grant, bargain, sell, assign, convey, transfer and confirm to trustees, their successor or successors, and their heirs and assigns forever, all the following properties, that is to say:

All that real estate and property in the County of Madera, in the State of California, in the United States of America, including the mining properties known as the Ne Plus Ultra Group [1828] of Mines, and described as follows, that is to say: The southwest quarter (S W  $\frac{1}{4}$ ) of the northwest quarter (N W  $\frac{1}{4}$ ) of Section twenty-five (25); also the southeast quarter (S E  $\frac{1}{4}$ ) of the northeast quarter (N E  $\frac{1}{4}$ ) of Section Thirty-five (35); also the north half (N  $\frac{1}{2}$ ) of the northeast quarter (N E  $\frac{1}{4}$ ) of the southeast quarter (S E  $\frac{1}{4}$ ) of Section thirty-five (35); all in Township nine (9) South Range, Eighteen (18) East, Mount Diablo Base and Meridian.

All other real estate and all interests and rights in, to or pertaining to real estate of every kind and wherever situate which said The California Nevada Copper Company now owns or is entitled to, or which it shall hereafter own or be entitled to.

Also all buildings, fixtures, structures, machinery, implements and tools, and all interests and rights in or to buildings, fixtures, structures, machinery, implements and tools, which said The California Nevada Copper Company now owns or is entitled to, or which it shall hereafter own or be entitled to.

Also one million four hundred and fifty thousand

three hundred and fifty (1,450,350) shares of the capital stock of the Bristol Consolidated Mines and Smelting Company, a corporation organized under the laws of Arizona.

Also all other shares of stock and all bonds of any corporation or corporations which said The California Nevada Copper Company now owns or is entitled to, or which it shall hereafter own or be entitled to.

To have and to hold the same with the rever-sions, remainders, rents, issues, income and profits thereof, and all privileges and appurtenances now or hereafter belonging or in anywise appertaining thereto, to the Trustees, their successors and assigns forever, IN TRUST NEVERTHELESS for those who shall hold the bonds and coupons aforesaid, or any of them, without preference of any of said bonds over any other thereof by reason of priority in the time of issue or negotiation, or otherwise, upon the terms, [1829] conditions and trusts herein set forth.

PROVIDED, HOWEVER, and these presents are upon the condition that if the Mortgagor, its successors or assigns shall pay or cause to be paid to the holders of said bonds and coupons the principal and interest to become due thereon, at the times and in the manner stipulated therein, and shall keep, perform and observe all the covenants and promises in said bonds and in this indenture expressed as to be performed and observed by or on the part of the mortgagor, then these presents and the estate and

rights hereby granted shall cease, determine and be void, otherwise to remain in full force.

It is hereby covenanted, declared and agreed by and between the parties hereto, and the mortgagor, for itself and its successors hereby covenants and agrees to and with the Trustees, and with the respective persons and corporations who shall be owners of said bonds or coupons, as follows; and the property hereby conveyed or transferred to the Trustees shall be held by them upon the following terms and conditions:

#### Article I.

No bond shall be secured hereby, or entitled to any of the benefits thereof, unless certified thereon in writing by the Trust Company to be one of the bonds herein described; and such certificate on any such bond issued by the mortgagor shall be conclusive evidence that it is duly executed and issued and is secured hereby.

Any of said bonds signed by the proper officers at the time of such signing shall, notwithstanding any change of officers prior to certification or issue, bind the mortgagor as if no such change had occurred.

Said bonds, together or in lots, shall be certified by the Trust Company and delivered by it upon and according to the written demand or order of the mortgagor, whether before or after the recording or filing of this instrument, and the signatures of the [1830] President or Vice-President and Secretary or Treasurer of the mortgagor shall be sufficient evidence to the Trust Company of any such order or demand of the mortgagor.

On evidence satisfactory to the mortgagor of the destruction or mutilation of any bond hereby secured, and upon indemnity satisfactory to it, and surrender and cancellation of said bond if mutilated, with all unmatured coupons, the mortgagor may execute, and on its written request the Trust Company shall certify and deliver, a new bond of the like tenor and amount, with the same serial number, in lieu of said substitution for such destroyed or mutilated bond. No bond shall be certified or issued in place of bonds delivered to the trustee for release of collateral or surrendered for conversion into stock under the provisions hereof.

#### Article II.

Any of the said bonds hereby secured may be at any time before maturity, at the option of the holder or registered owner, as the case may be, converted into stock of the mortgagor as follows:

Any such holder or owner may at any time surrender any of said bonds with all unmatured coupons to the Trust Company for such conversion, any registered bonds so surrendered being duly indorsed for transfer to the Trust Company, and thereupon the Trust Company shall cancel said bonds and the coupons thereof and the mortgagor shall issue to such holder or owner common stock of the mortgagor to an amount equal at par to the principal of the bond or bonds so surrendered and shall pay to such holder or owner in cash any interest on said bond or bonds accrued since the date of the last mentioned coupon.

#### Article III.

The property subject hereto, being the property



above described, with such additions thereto and changes therein as shall have been made in accordance with, or under, the provisions [1831] hereof, is herein called the Mortgaged Property, or the Collateral; and the stocks or bonds included therein are herein respectively called the collateral stocks or bonds.

While not in default in the payment of the principal or interest of any of the bonds hereby secured, or in respect to any of the covenants contained in said bonds or in this indenture, the mortgagor shall be entitled to receive to its own use and benefit all interest and all dividends from earnings which shall be payable on the collateral stock and bonds and all interest upon any money held by the trustee hereunder, and shall be entitled to vote upon collateral stock. But the collateral bonds and the certificates for the collateral stock shall be and remain in the possession of the Trustes, and the collateral stocks or any thereof may at any time in the discretion of the Trustees be transferred to their name or the name of their nominees, and in such case, in the absence of default as aforesaid, the necessary proxies on such stocks shall be given to enable the mortgagor to vote thereon as aforesaid.

But on any default upon any collateral bonds, or under the mortgage or other security for any such bond, the trustee shall have, and may exercise, all the rights of a holder of such bond for the enforcement thereof or of the security therefor, and any proceeds thereof shall be held by them and be deemed



to be part of the collateral, and any moneys so received by the trustee may be replaced or applied in the same manner as moneys received under Article IV hereof.

And while not in default in the payment of the principal or interest of any of the bonds hereby secured, or in respect to any of the covenants or promises in said bonds or in this indenture, the mortgagor shall be suffered and permitted to possess, use and enjoy the collateral other than stocks and bonds and moneys held by the Trustee hereunder, and to receive and use the income, rents, issues and profits thereof. [1832]

#### Article IV.

Any of the collateral stocks or bonds shall be released and surrendered by the Trustees to the mortgagor, or its successors, and discharged from the lien hereof, on demand of the mortgagor or its successors, on the following conditions, that is to say:

On the condition that an amount equal to sixty per centum (60%) of the par value of the collateral shall have been delivered to the Trustees, either in cash to be held and used as hereinafter provided, or in bonds hereby secured (bearing all unmatured coupons), which bonds shall be taken at par and accrued interest, and shall be immediately cancelled.

All moneys so received by the Trustees, or any part thereof, may at any time be replaced by the mortgagor or its successors by bonds hereby secured (bearing all unmatured coupons), at par and accrued interest, and such bonds shall thereupon be regarded for all the purposes of this instrument as

delivered for release of collateral, and subject to the foregoing provisions. All of said moneys so received by the trustees shall (subject to such replacement) be held by them as security for the payment of said bonds and the performance hereof.

#### Article V.

Section 1. The Mortgagor will pay the principal and interest on all bonds issued hereunder, according to the terms of said bonds and of this indenture, without deduction on account of taxes, assessments or other governmental charges by whatever authority the same may be levied.

Section 2. As the coupons annexed to said bonds are paid they shall be cancelled, and coupons shall not be kept alive, or their rights in, to or under the security hereby provided be preserved, by any purchase of coupons or advance or loan thereon or redemption thereof by or on behalf of the mortgagor.

Section 3. While any of said bonds are outstanding, the mortgagor will keep an office or agency in the Borough of Manhattan, in the City of New York, for the payment of the [1833] principal and interest thereof, and where notices, presentations and demands to or upon the mortgagor in respect of said bonds or coupons or under this indenture may be given or made, and designate such office or agency in writing to the Trustees, and if it shall fail to do so, such notice, presentation or demand may be given or made at the office of the Trust Company; and it will keep in said Borough of Manhattan, and designate in writing to the Trustees,—an office or agency at which books will be kept on which transfer of any

bonds shall upon request be registered without expense to the holder. The Trustees shall have access to said books at all reasonable times, and on request in writing shall receive a list of the registrations shown thereon at any specified date. For the purpose of administering the trust created by this indenture the person in whose name any bond is registered on said books shall be taken to be the owner thereof.

Section 4. The mortgagor will pay all taxes, assessments and other governmental charges lawfully levied or assessed upon any of the collateral, or any income therefrom, when the same shall become due, and will duly observe and conform to all valid requirements of any governmental authority relative to any of the collateral, and all covenants, terms and conditions upon or under which any of the collateral can be held, and will not suffer any lien to be hereafter created upon any of the collateral prior to the lien of these presents, and will not do or suffer any act, thing or omission whereby the lien hereof or any estate or title covered hereby may be impaired; Provided, however, that the mortgagor may omit to pay any tax, assessment or other governmental charge upon any of the collateral so long as it in good faith, without reasonable delay, and by proper legal proceedings, shall contest the validity thereof.

Section 5. The mortgagor will keep all buildings and other insurable property at any time covered by this indenture insured against loss or damage by fire to an amount satisfactory to the Trustees, by insurance companies in good standing, loss being

[1834] made payable to the Trustees as their interests may appear, and all insurance which the mortgagor shall procure on the mortgaged property shall be made so payable; and the policies for all such insurance shall be delivered to the Trustees. The proceeds of any insurance, or so much thereof as the mortgagor shall deem best, shall be applied by the mortgagor under the supervision or with the approval of the trustees, to restoring, repairing or replacing property injured or destroyed, or providing substitutes therefor, or improvements or additions to the mortgaged property, all of which shall forthwith be subject to the lien hereof; and the trustees may accept as conclusive evidence of the propriety and advisability of any such application of proceeds of insurance the certificate of two-thirds of the directors of the mortgagor then in office, including the President or Vice-President; and subject to such application as aforesaid such proceeds shall be held and may be replaced or applied as is provided with respect to moneys received under Article IV hereof.

Section 6. If the mortgagor shall fail to perform any of its covenants contained in Section 4 and 5 of this Article, the trustees may make advances to perform the same in its behalf, and shall do so if requested in writing by holders of one-fourth in amount of the bonds hereby secured and then outstanding, and provided by them with money necessary therefor; and all sums so advanced shall be at once payable by the mortgagor to the trustees, with all interest at six per centum (6%) per annum, and shall be secured hereby in priority to the indebted-

ness evidenced by said bonds and coupons; but no such advance shall relieve the mortgagor from any default hereunder. The Trustees shall out of any amount repaid to or recovered by it on account of such advance (and interest) make ratable payment to any bondholders who shall have so provided money for such advance.

Section 7. The mortgagor, its successors and assigns, will at all times do and execute such further acts and instruments as [1835] shall be necessary or reasonably requested in order to vest or assure in or to the Trustees any property hereby intended to be conveyed, assigned or transferred, or any property hereinafter acquired by the mortgagor which it is herein provided shall be or shall be made subject hereto, or in order to in any way effect or carry out the purposes of this indenture.

#### Article VI.

If default shall be made in the payment of the principal or interest of any of said bonds hereby secured, or if any other default in performance on the part of the mortgagor or its successors of any of the provisions hereof shall continue for thirty days after written notice of default and demand of performance from the Trustees or the holders of ten per centum in amount of the outstanding bonds, the right of the mortgagor, or its successor, to receive interest or dividends or to vote on any of the collateral shall thereupon cease, and the trustees shall be entitled to receive such interest and dividends, and to vote upon any of the collateral stock, or to give consents with respect to such stock, as if they



were owners thereof, and the mortgagor, or its successors, will execute and deliver to the Trustees from time to time such assignments, orders, proxies and powers of attorney as shall be reasonably requested by them for any or all of said purposes.

#### Article VII.

If default in the payment of the principal or interest of any of said bonds hereby secured shall be made and shall continue for a period of thirty days, or if any other default in performance on the part of the mortgagor or its successors of any of the provisions hereof shall continue for sixty days after written notice of default and demand of performance from the trustees or the holders of ten per centum, in amount, of the outstanding bonds, the trustees, at their election, may, and upon request in writing signed by the holders of one-fourth, in amount, [1836] of the bonds, hereby secured and then outstanding shall, take proceedings for the enforcement of the security hereby provided by one or more of the following methods, as the Trustees shall elect:

(a) The Trustees may enter upon and take possession of any or all of the mortgaged property, and also any other property or assets of any kind, of the mortgagor and hold, lease, operate and manage the same, and from time to time make such repairs and improvements as they shall deem wise, and receive the rents, incomes, issues and profits thereof, and out of the same pay all proper charges, costs and expenses, including reasonable compensation to the Trustees, their agents and counsel, any charges of the Trustees hereunder, and any taxes and other



charges prior to the lien hereto, and apply the remainder of the moneys so received by them, first, to the payment of the interest coupons due and unpaid in the order of maturity, with interest at six per centum (6%) from maturity, and thereafter, if the principal of said bonds shall be due, to the payment of said principal and accrued interest thereon pro rata without any preference or priority, and whenever the default for which such entry shall have been made shall be discharged and all that is due on such bonds and coupons and all charges, expenses and advances of the Trustees and any interest thereon shall have been paid, the Trustees shall surrender possession to the mortgagor, its successors or assigns, of the property other than the collateral bonds, stocks and certificates of stock and the moneys received by the trustees under Articles III, IV, V and VI hereof. But the same right of entry shall exist on any subsequent default. And in case the Trustees shall so elect to enter or take possession, they are hereby fully authorized so to do without further notice of any kind, and every officer and agent of the mortgagor and every person having custody or possession of any of the mortgaged property or other property or assets of the mortgagor is hereby authorized and directed, upon such election, to deliver [1837] the same to the Trustees.

(b) The Trustees may sell the collateral, or such part or parts thereof as they shall deem necessary or proper, without any demand for payment, or any notice other than that hereinafter provided; and all demands and all other notice are hereby waived.

The collateral may be sold at one or more times and in one or more lots in the discretion of the Trustees. In making any such sale the Trustees may at their discretion act by one or more employes, brokers or agents, or they may demand or procure the Sheriff or Marshal to make any such sale.

In case of any sale of any of the collateral stocks or bonds, such sale may be made at any broker's board, or at public or private sale, in the discretion of the Trustees; and the trustees shall give to the mortgagor written notice of intention to make any such sale, stating the collateral intended to be so sold. Such notice in case of sale at public action shall state the time and place fixed for such sale, and in case of sale at broker's board shall state the board at which such sale is to be made and the day on which said collateral will first be offered for sale at said board. Such notice shall be sufficiently given if given at least ten (10) days before the sale. The trustees shall not, however, be obliged to make any sale pursuant to such notice; and offerings at broker's board may be made from day to day from the date specified in the notice; and the Trustees may adjourn any sale in whole or in part and proceed according to such adjournment without further notice; or the Trustees may discontinue or abandon any sale in whole or in part. If a sale of such collateral be at public auction it shall be upon such advertisement as the Trustees in their discretion shall deem proper.

In case of any sale of collateral other than stocks or bonds, the sale shall be made at public auction,

and shall be upon such notice as shall at the time be by law required for sale of real property on mortgage foreclosure. The Trustees may adjourn any [1838] sale in whole or in part and proceed according to such adjournment without further notice save such as shall be required by law, or the Trustees may discontinue or abandon any sale in whole or in part. After deducting all expenses arising from or incidental to the sale, and all other advances, expenses and charges of the Trustees (with any interest thereon), the Trustees shall apply the residue of the proceeds, together with all cash held by them hereunder as security for such bonds, first, to the equal *pro rata* payment of the unpaid interest on the bonds hereby secured, and, next, to the equal *pro rata* payment of all of the bonds hereby secured then outstanding, and shall account for and pay over and deliver to the mortgagor, its successors or assigns, the surplus, if any, and any of the collateral remaining unsold after payment in full of said bonds and interest, and the Trustees' advances, expenses and charges.

(c) The Trustees may take judicial proceedings for the foreclosure or other enforcement of the security herein provided with respect to the collateral, or any thereof.

#### Article VIII.

· Upon commencement of judicial proceedings for the foreclosure hereof, or upon the commencement (by notice aforesaid) of proceedings for the sale hereunder of any of the collateral, the lien of this indenture and all the provisions of this indenture

shall immediately and from that time extend to and cover all other property and assets of the mortgagor of every kind then owned by it or to which it shall then be entitled in addition to those previously subject hereto, and including both tangible and intangible property, moneys, bonds, negotiable instruments, accounts, stocks, patents, contracts, rights, books, records, papers and other assets of every kind; and the Trustees shall immediately be entitled to possession thereof and are hereby authorized to enter thereon and take possession thereof, and the mortgagor shall deliver the same to the Trustees, and every [1839] officer and agent of the mortgagor and every person having custody or possession thereof is hereby authorized and directed to deliver the same to the Trustees, and the mortgagor shall do and execute such further acts and instruments as shall be necessary or reasonably requested to vest the same in the Trustees hereunder on the same terms and provisions as the other property hereby conveyed, assigned or transferred to the Trustees.

#### Article IX.

Upon any sale of any of the collateral under the provisions of this indenture, or under any judicial proceedings taken for the enforcement hereof, the principal of all of the bonds hereby secured and then outstanding shall immediately be due and payable.

In case any default in the payment of interest of any of the bonds hereby secured shall continue for a period of sixty days, the Trustees, at their election, may, and upon request in writing signed by the holders of one-fourth in amount of the bonds hereby se-

cured and then outstanding shall, by written notice to the mortgagor declare the principal of all of the bonds hereby secured to be immediately due and payable, and they shall be due and payable accordingly.

#### Article X.

At any sale made hereunder by the Trustees, or by the Marshal or Sheriff, or made upon judicial proceedings hereunder, the Trustees, or either of them, or the holder or holders of any of the bonds or coupons hereby secured, may purchase any or all of the collateral so sold, and may hold the same thereafter absolutely and free from any claim of the mortgagor or its successor.

Any purchaser at any such sale may, in paying the purchase money, turn in any of said bonds and coupons hereby secured in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon; and said bonds and coupons, in case the amount so payable thereon shall be less [1840] than the amount due thereon, shall be returned after being properly stamped to show partial payment. Upon any such sale the Trustees are authorized to execute one or more deeds or other instruments for conveying, transferring or assuring to the purchaser or purchasers the property sold.

#### Article XI.

No bondholder or bondholders shall be entitled to take any proceedings for the enforcement of any of the provisions hereof, or of the security hereby provided, except in case of refusal or neglect of the Trustees to act as hereinbefore provided upon the request of the holders of one-fourth in amount of



the bonds hereby secured and then outstanding and upon being indemnified as hereinafter provided, or in case there be no trustee hereunder.

#### Article XII.

Upon the commencement of judicial proceedings to enforce the rights of the Trustees hereunder, or the security hereby provided, any court of competent jurisdiction may appoint a receiver or receivers of the mortgaged property.

#### Article XIII.

Neither the mortgagor nor any one claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, execution or redemption law now existing, or which may hereafter be enacted, in order to prevent, delay or hinder the enforcement or foreclosure hereof, or the absolute sale of, and vesting title to, the property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat; and the benefits of all such laws is hereby waived.

#### Article XIV.

Any request herein provided to be made by the holder of any bond hereby secured, shall be in writing signed by the bondholder, or his authorized attorney, and acknowledged before an [1841] officer authorized to take acknowledgments of deeds where the acknowledgment is made. The Trustees may require any person claiming to be a bondholder to produce his bond, or prove his ownership by his oath or by any other evidence satisfactory to the Trustees.



Payments by the Trustee to holders of bonds or coupons hereunder shall be on presentation to the Trustees of the bonds or coupons and endorsements thereon by the Trustees of the amount paid thereon in case of partial payment, and surrender to the Trustees in case of payment in full.

Article XV.

The Trustees may, and on request of the mortgagor or its successor shall, cancel and discharge the lien of these presents and execute and deliver to the mortgagor, its successor or assigns, such deed or deeds as shall be required to satisfy the lien hereof, and reconvey and assign to the mortgagor, its successors or assigns, the estate and title hereby conveyed, whenever all indebtedness secured hereby shall have been paid or discharged, including all proper charges of the Trustees.

Article XVI.

The trustees shall not be required to take notice of any default hereunder, unless expressly notified in writing of such default by one or more holders of bonds hereby secured. In acting upon or with reference to any bond, request, consent or other paper believed to be genuine and to have been signed and presented by the proper person, either Trustees shall be protected in so acting; neither Trustees shall be liable for the acts, neglect or omission of the other, and neither Trustee shall be liable or responsible for any act or neglect hereunder, except for its own gross negligence or wilfull default; neither Trustee shall be responsible or liable for, or by reason of, any default or omission of any agent,

attorney or employe employed hereunder, provided such agent, attorney or employe be selected with reasonable care. The Trustees shall be under no obligation to take [1842] any proceeding or take any responsibility, or incur any liability for the purpose of enforcing this agreement, or protecting the interests of the bondholders hereunder, unless they shall be first indemnified to their satisfaction in respect thereof.

Neither Trustee shall have any liability or responsibility with respect to the recording or filing of this indenture, or with respect to the issue of stock upon surrender of bonds under the provisions of this indenture. The Trustees make no representation as the validity of this agreement, or as to the security (be liable for any recital of fact herein contained or in the bonds hereby secured or) hereby afforded, and shall not have any responsibility as to the validity of the collateral, or as to the execution or acknowledgment hereof.

#### Article XVII.

The mortgagor, or its successors, shall pay to the Trustee a reasonable compensation, and all advances and expenses connected with the execution and enforcement hereof, including legal expenses, with interest, and such advances, compensation and expenses shall be a first lien hereunder upon the collateral.

#### Article XVIII.

Any Trustee hereunder may resign by written notice to the mortgagor and notice published in the Borough of Manhattan in the City of New York in

the State of New York.

If and whenever either Trustee above named or any Trustee appointed hereunder is or shall be or become legally incapable (through lack of corporate power or failure to conform to the laws of any state or otherwise), of being or acting as a trustee hereunder with respect to the property hereby conveyed or transferred or which shall be subject hereto or is intended so to be, or is or shall be or become so incapable with respect to any part of said property, or if any Trustee hereunder shall resign or be removed; then (first) a trustee may be appointed in the manner hereinafter provided in the place of the trustee so incapable, removed or resigning, and (second) until such appointment the [1843] estate, title, interest, rights, powers and duties hereinbefore expressed to be granted to, vested in or imposed upon the Trustees, shall be vested in or imposed on and are hereby granted to and accepted by the other trustee; Provided, however, that the Individual Trustee shall not be vested with powers, rights or duties hereinbefore originally vested exclusively in the Trust Company, or stated so to be; and provided further, that if any trustee be or become incapable as aforesaid and such incapacity be removed such trustee shall thereupon be a trustee hereunder, and have all the estate, rights, interests, powers and duties of such Trustee, unless a successor or substitute Trustee shall have been previously appointed hereunder; and provided further, that if any Trustee shall be or become incapable as aforesaid with respect only to part of said property,

such trustee shall continue to be a trustee hereunder, and with the estate, title, interest, rights, powers and duties of such trustee herein granted and provided for, except only as to such part of said property and the estate, title, interest, rights, powers and duties of the trustee relating thereto; and in such case the successor or substitute trustee shall be appointed hereunder only with respect to, and the foregoing provisions of this Clause XVIII for granting and vesting property, powers, rights and duties upon such incapacity shall apply only to, such part of the said property and the estate, title, interest, rights, powers and duties of the trustee relating thereto.

Such successor or substitute trustee above provided for may be appointed by written instrument or instruments executed by the holders of a majority in amount of the outstanding bonds hereby secured, and acknowledged or proved in the manner required for deeds of real property to be recorded in the State of California; and until such appointment such successor or substitute Trustee may be appointed by written instrument executed by the mortgagor and simply acknowledged or proved, but a trustee so appointed [1844] by the mortgagor shall continue to be such Trustee only until appointment of a trustee for such place by bondholders as aforesaid, and shall be entirely superseded by a trustee so appointed by bondholders.

A substitute or successor Trustee appointed as provided in this clause XVIII, shall (subject to the limitations above stated) upon such appointment succeed to and be vested with the office, estate, title,

interests, rights, powers and duties of the Trustees in whose place such substitute or successor is appointed, and be subject to the provisions of this instrument, and shall be and be deemed a trustee hereunder, and the preceding trustee and the other trustee shall do and execute all acts and instruments necessary or reasonably requested to effectuate and confirm such succession.

All things which it is in this instrument provided may or shall be done by or towards the mortgagor may be done with like effect by or towards the successor of the mortgagor.

IN WITNESS WHEREOF the MORTGAGOR and the Trust Company have respectively caused their corporate seals to be hereto affixed attested by their respective secretaries, and these presents (executed in several originals) to be signed in their respective names by their respective Presidents or Vice-Presidents, and the Individual Trustee has hereto set his hand and seal, the day and year first above written.

THE CALIFORNIA-NEVADA COPPER  
COMPANY,

By F. L. UNDERWOOD,  
President.

THE STANDARD TRUST COMPANY OF  
NEW YORK,

By WM. C. LANE,  
President.

EDWARD M. F. MILLER. (Seal)



Executed in the presence of

Attest: \_\_\_\_\_,  
Secretary.

Attest: \_\_\_\_\_,  
Secretary. [1845]

State of New York,

County of New York,—ss.

On this 27th day of March, 1908, before me, Joseph M. Alexander, a notary public in and for said County of New York, residing therein and duly commissioned and sworn, personally appeared F. L. Underwood, to me known and known to me to be the President of the California-Nevada Copper Company, one of the corporations described in and which executed the within instrument, and he being by me duly sworn did depose and say that he resided at New York City, that he was the President of said The California-Nevada Copper Company, that he knew the corporate seal of said corporation, that the seal affixed to said instrument was such corporate seal and was thereto affixed by order of the board of directors of said company, and that he signed his name thereto by like authority; and he acknowledged to me that said corporation executed said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said county of New York, the day and year in this certificate first above written.

(Seal)

JOSEPH M. ALEXANDER,

Notary Public, 17.

New York County.



State of New York,  
County of New York,—ss.

On this —— day of ——, 1908, before me, ——, a notary public in and for said County of New York, residing therein and duly commissioned and sworn, personally appeared Wm. C. Lane, to me known and known to me to be the President of the Standard Trust Company of New York, one of the corporations described in and which executed the within instrument, and he being by me duly sworn, did depose and say that he resides at New York City, that he was the president of said The Standard Trust Company of New York, that he knew the corporate seal of said corporation, that the seal affixed to said instrument was [1846] such corporate seal and was thereto affixed by order of the board of directors of said Company, and that he signed his name thereto with like authority; and he acknowledged to me that said corporation executed said instrument.

And on the same day before me, the said notary public, personally came Edward M. F. Miller, to me known and known to me to be the person of that name described in and who executed the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of New York, the day and year in this certificate first above written.

(Seal)

JOSEPH M. ALEXANDER.

Notary Public, 17

New York County.

State of New York,  
County of New York,—ss.

Edward M. F. Miller, Frank L. Underwood, the President of The California Nevada Copper Company, described in and who executed the within instrument, and William C. Lane, the President of the Standard Trust Company of New York, described in and which executed said instrument, and Edward M. F. Miller, described in and who executed the within instrument, personally appeared before me this day, and having thereupon been by me severally duly sworn, severally depose and say that he, the said Frank L. Underwood, is the President of said The California Nevada Copper Company, and that he, the said William C. Lane, is the President of said The Standard Trust Company of New York, and that the said instrument or mortgage is made in good faith and for value, and to secure the amount named therein, and without and design to hinder, delay or defraud creditors.

FRANK L. UNDERWOOD,

WM. C. LANE,

EDWARD M. MILLER. [1847]

Sworn to before me in the said County of New York this 27th day of March, 1908.

(Seal)

JOSEPH M. ALEXANDER,

Notary Public, 17,

New York County.

Filed for record at 9:35 A. M. January 6th, 1910.  
H. H. Folsom, Recorder. [1848]

**Plaintiff's Exhibit No. 40—Oral Opinion in  
No. 803-A.**

*In the District Court for the District of Alaska,  
Division No. One.*

No. 803-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation, ALASKA TREAD-  
WELL GOLD MINING COMPANY, a Cor-  
poration, L. D. MULLIGAN, O. M. HARRY,  
and R. G. DATSON,

Defendants.

**Oral Opinion.**

Mr. N. L. BURTON, for Plaintiff,

Messrs. J. and S. HELLENTHAL and W. S.  
BAYLESS, for Defendants.

There isn't any question but what a court of equity will always lend its assistance towards the preservation of property during the trial of an action where the property, or the title of the property, is in controversy, that is: if in a suit in equity, or in an action of law, injunctive relief is asked pending the trial of the action to prevent the destruction of the property, or to prevent the extraction of its values, there isn't any doubt but what a court of equity should, and will, issue a restraining order to prevent

a diminution of the value of the property pending the litigation.

What are the facts in this case? Plaintiff claims certain water rights on Gold Creek, also claims certain mining claims, patented and unpatented. He claims that the defendants have gone upon one of the patented claims and began to divert the water of Gold Creek. There is no evidence, not even an insinuation, that there is any of the water being sought to be diverted over which the plaintiff has any prior right, or to the use of [1849] which the plaintiff has any prior right.

There isn't any question but what water may be diverted for mining purposes. There isn't any question under the late ruling of the Appellate Court but what the riparian owner will not be heard to object to the diversion of water, unless he himself is putting the water to some beneficial use, and he then must show that the water that is being taken is diminishing the water that he had prior to that time been actually using. In other words, the law of appropriation of water rights obtains in this jurisdiction.

Now what is the situation with reference to trespass or the alleged trespass? It is true the plaintiff claims and offers evidence to the effect that the attempted diversion is on his patented claim, and my own judgment is that, if that were uncontradicted, the Court should restrain the trespass, but is that the case here? Counsel says with a good deal of energy that the defendants merely literally denied the ownership of the plaintiff.

Now, let's see what the proof is. The record shows that it is not on the Lotta claim. The records may be wrong, but surely no court of equity will so hold in a preliminary hearing and put a man who is out of possession in possession and dispossess the one in possession. These stakes on the Lotta claim may be the original boundary corners of that claim and, if that is true, the attempted diversion is on the Lotta claim, but why should the Court assume that these monuments are more apt to be correctly located than the monuments of the Idaho, although they may have been there for many years. It is very easy for a man in going over these claims to see a stake today and see it again in three years from now and think it is in the same place. But be that as it may, there is a method by which it can be determined positively whether or not this diversion is on [1850] patented ground or otherwise. That hasn't been done by either party.

Counsel has asked me if I have any doubt as to where the title lies. I certainly have very substantial doubt as to where the title is, and I think that anybody could not have heard the testimony but what he would think the same way and would have a substantial doubt as to whether the attempted diversion, or the alleged trespass, is within the boundaries of a patented claim.

Now, as to the unpatented claim, as a matter of fact there has been no proof of title of any claim, of any mining claim offered. There may have been a sort of tacit admission. The only way to prove a mining claim is to follow the law and show that its



boundaries have all been marked, that they can be readily traced, that its corners have been marked and a discovery made. It is true that there are affidavits here that the assessment work has been done and certain monuments located. There isn't a syllable of evidence as to whether any of these claims were legally located mining claims, and for a court of equity on evidence in the form of ex parte affidavits, without seeing these claims, to say that one claim is a valid claim under such testimony, and that the other is a void claim, and grant a restraining order against a trespass where there has been no proof that the injury is irremedial or could not be compensated in damages, or that the damages would be of any particular consequence, is going farther than any court should go in a hearing for a preliminary restraining order.

So it seems to me in a case of this kind where there is any substantial doubt as to the title of the property, and where there is no doubt the defendants are taking infinitely more chances—they are doing this at their peril,—they must believe they have title,—as I say, they are the ones that are taking the chance, and when a court can see no reason why there would be any resulting irreparable damages, I think that a court ought not to hesitate a minute in refusing an injunction. [1851]

Courts should not only follow the law, but they should take a business view of the testimony and a business view of the transactions of men in interpreting their rights, and in interpreting their motives and intentions and, as I say, it seems to me that



the defendants are assuming more peril in constructing a work of this kind on disputed ground than the plaintiffs are, if they don't succeed in showing their title at the final hearing.

So far as any water rights the plaintiff may have upon Gold Creek, there is no evidence that this diversion will in any way conflict with those rights; in fact, there couldn't be any evidence of that sort, because the man who is down the stream is the man that must be heard to cry for the water and, when he does so, the Court will then determine what were the rights of the plaintiff in this court and the total amount of water he was entitled to at the date of the inception of plaintiff's or defendants' appropriation.

The restraining order will be refused; to which opinion the plaintiff excepted and an exception is allowed.

Done at Juneau, Alaska, September 2, 1910.

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#### CERTIFICATE.

I, R. E. Robertson, Official Court Stenographer for the District Court for the First Division of Alaska, hereby certify that the foregoing and hereto annexed four pages of typewritten matter constitute a true and complete copy of the Oral Opinion in the above entitled matter, delivered by the Honorable Thomas R. Lyons, Judge, as taken by me in shorthand and as extended by me from said shorthand notes.

Dated at Juneau, Alaska, this 29th day of May, 1911.

R. E. ROBERTSON,  
Official Court Stenographer. [1852]

**Plaintiff's Exhibit No. 41—Water Locations of  
Record Made in Harris Mining District, District  
of Alaska, from June 27, 1881, etc., to July,  
1914.**

Plffs Exhibit No. 41. Received in evidence Aug.  
8, 1914. In Cause No. 1074-A. J. W. Bell, Clerk.  
By J. T. Reed, Deputy.

ALL THE WATER LOCATIONS OF RECORD  
MADE IN HARRIS MINING DISTRICT,  
DISTRICT OF ALASKA, FROM JUNE 27,  
1881, WHEN THE FIRST WATER RIGHT  
WAS APPROPRIATED IN THIS DISTRICT,  
DOWN TO DATE (JULY 1914).

- 
- A, Place of use designated.  
X, No Place of use Designated.  
B, Where time between location and recording is  
10 days or less.  
O, Where time between location and recording is  
more 10 days.

Locator.	Location.	Date of Location.	Date of Record.	Where Recorded.
Walsh, Leary & Co.	300" Ice Gulch	June 27, 1881	June 27, 1881	1 Plac 4 (AB)
N. McMahon	200" Ice Gulch	July 11, "	July 16, "	" " 16 (AB)
Charles B. Sperry	Snow Slide Gulch	" 12, "	" 21, "	" " 19 (XB)
James E. Woods	100" Below Falls.	" 30, "	" 30, "	" " 23 (XB)
R. Daily	Gold Creek	July 30, "	" 31, "	" " 23 (ABB)
G. E. Pelz	750" Summit Crk.	July 30, "	Aug. 1, "	" " 24 (ABB)
John Dix	600" Dix Gulch	July 30, "	" 7, "	" " 26 (A)
F. Mahon	300" " "			
John Maher	All tributaries of			
R. T. Harris &	this water ditch,	Aug. 22, "	" 22, "	" " 29 (AB)
Jos. Juneau	known as discovery ditch			

Locator.	Location.	Date of Location.	Date of Record.	Where Recorded.
P. Johnson et al	All Gulch N. W. of Snow Slide Gulch	" 24, "	" 25, "	" " 31 (AB)
P. M. Richards & Geo. Wittier	1000" Speciman Gulch	" 31, "	" 31, "	" " 35 (XB)
W. Pierce	First Gulch above Artic Cabin	Sept. 10, "	Sept. 11, "	" " 38 (AB)
John Dix	200" Ice Gulch	Apl. 7, "	Apl. 7, "	" " 36 (AB)
John Olds	500" Speciman Gulch	Sept. 10, "	Sept. 11, "	" " 38 (AB)
W. Pierce & John Dix	700" Dix Creek	" 18, "	" 18, "	" " 41 (AB)
Frank Corwin & Preston Cloudinar	600" Ice Gulch	June 4, "	June 7, "	" " 45 (AB)
M. Powers	200" " "	" 9, "	" 12, "	" " 46 (AB)
J. F. Gray & A. Mulhern	200" " "	Sept. 19, "	Sept. 22, "	" " 46 (XB)
John Treadwell & D. P. Mitchell				

[1853]

Locator.	Location.	Date of Location.	Date of Record.	Where Recorded.
J. Walch & John Leary	200" Ice Gulch	June 10, 1881	June 12, 1881	1 Plac 47 (AB)
R. T. Harris & Jos. Juneau	300" Quartz Gulch	" 13,	" 13,	" " 48 (AB)
J. D. Sagemiller	All Snow Slide Gulch	Sept. 29,	Sept. 29,	" " 54 (XB)
H. Franklin & F. McMahon	1000" Franklin Gulch	Oct. 4,	Oct. 4,	" " 60 (AB)
J. W. Cooper et al	1000" Harris Cr.	Sept. 29,	" 9,	" " 61 (AB)
S. Lewis	All——			
	Rockwell, Alaska	Feb. 15,	" 6,	" " 139 (AO)
D. Kennedy	100" ——Creek	Oct. 21,	" 25,	" " 64 (AB)
J. Boyle	200" Ice Gulch	Nov. 4,	" 6,	" " 66 (AB)
H. Franklin	1000" E. Fork of S. Fork Gold Cr.	" 5,	" 6,	" " 67 (AB)
Chas. Binkec	500" Ice Gulch	" 8,	" 8,	" " 68 (AB)
M. Powers 600"	600" Paris Creek	" 9,	" 9,	" " 68 (AB)
J. McKinnon & R. Dixon	300" Douglas Island	" 9,	" 15,	" " 70 (XB)
John Dix	1000" Speciman Gulch	" 17,	" 17,	" " 74 (AB)
Total Number of Notices	Summary for year 1881			No date of Location
30	A X B O			1
	24 6 28 1			

Locator.	Location.	Date of Location.	Date of Record.	Where Recorded.
E. A. Evans for the Eureka Co.	Taku Millsite Gulch	May 22, 1882,	June 23, 1882,	1 Plac. 132 (AO)
R. Dunn & Evan Evan Williams	300" Snow Slide Gulch	Nov. 22, 1881,	Feb. 8, " 2	" 81 (XO)
S. Lewis	200" Near N. W. Cor. stake Mexican Mine	Jan. 29, 1882,	" 9, " 2	" 81 (AO)
Sam Roy	800" Ready Bullion Creek	Mar. 24, " 8,	Mar. 25, " 8	" 85 (AB)
J. Jackson & M. Thomas	400" Bear Creek Douglas Island first creek N. W. of Paris	Apl. 8, " 8,	Apl. 8, " 8	" 87 (AB)

[1854]